

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Pers Service

77-6090

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-6090

THE CONDE NAST PUBLICATIONS INC.,

*Plaintiff-Appellee,
Cross-Appellant,*

—against—

UNITED STATES OF AMERICA,

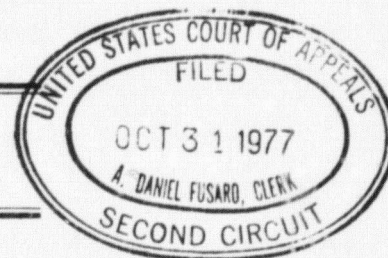
*Defendant-Appellant,
Cross-Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

SABIN, BERMANT & BLAU
*Attorneys for Plaintiff-Appellee,
Cross-Appellant*
350 Madison Avenue
New York, New York 10017

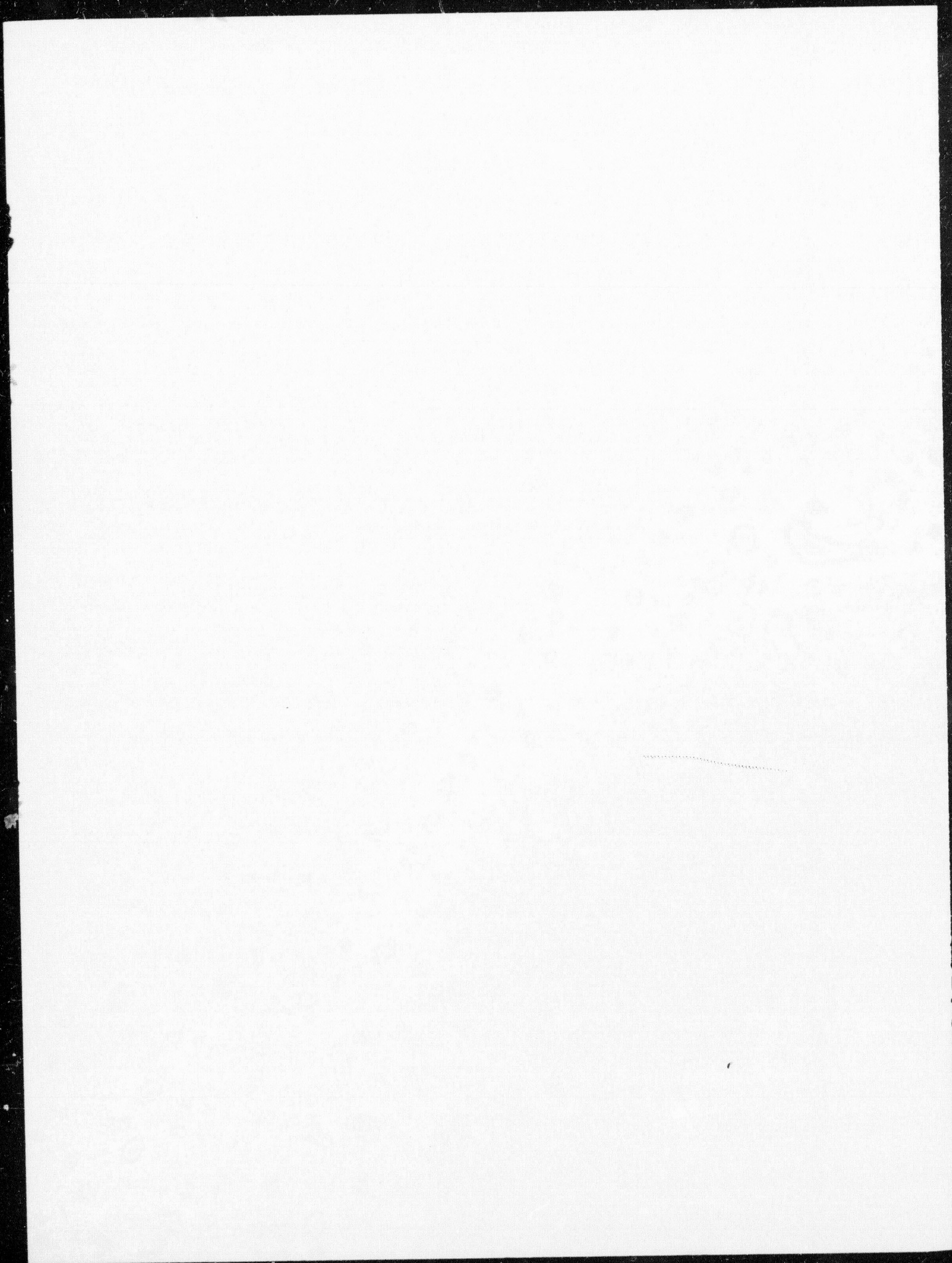
ROBERT B. FISKE, JR.
*United States Attorney
Attorney for Defendant-Appellant,
Cross-Appellee*
One St. Andrew's Plaza
New York, New York 10007



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS FOR JOINT APPENDIX

	PAGE
Docket Entries	A-1
Plaintiff's Complaint	A-4
Defendant's Answer	A-13
Pre-Trial Order (including Stipulation of Facts and Exhibits)	A-14
Opinion and Order	A-135
Stipulation and Order	A-157
Judgment	A-159
Amended Judgment	A-160
Defendant's Notice of Appeal	A-161
Plaintiff's Notice of Cross-Appeal	A-162



A 1

JUDGE CANNELLA

Jury demand date:

D. C. Form No. 103 Rev.

TITLE OF CASE		ATTORNEYS			
THE COMDE NAST PUBLICATIONS, INC		For plaintiff: SABIN, BERGANT & BLAU 350 Madison Avenue, N.Y.C. 10017 953-0400			
vs.					
THE UNITED STATES OF AMERICA.		6/10			
		For defendant: U.S. ATTY. (X-6537)			
STATISTICAL RECORD		COSTS		DATE	NAME OR RECEIPT NO.
J.S. 5 mailed	X	Clerk		11/2/73	Allyn
J.S. 6 mailed	✓	Marshal			
Basis of Action:		Docket fee			
OVERPAYMENT OF INCOME TAX.		Witness fees			
Action arose at:		Depositions			

A

73 Civ 4909

THE CONDE NAST PUBLICATIONS, INC. VS. THE UNITED STATES OF AMERICA.

73 Civ. 4909

DATE	PROCEEDINGS	Date Order or Judgment Noted
Nov 15-73	Filed Complaint. Issued Summons.	
Nov 28-73	Filed summons with marshals ret, served U.S.A. by U.S. Atty.- P. Troia on 11/16/73	
Dec 21-74	PRE-TRIAL CONFERENCE HELD BY RABY, U.S. MAG.	U.S. Atty.
May 22-74	Filed ANSWER	
May 22-74	Filed deff's request for admission.	
May 22-74	Filed deff's interrogs. and requests to produce documents.	
June 20-74	Filed pliff's response to request for admission	
June 20-74	Filed pliff's answers to interrogs.	
June 25-74	Pre-trial conference held- Raby, U.S. Mag.	
Dec 11-74	PRE-TRIAL CONFERENCE HELD BY RABY, U.S. MAG.	
Feb. 4-75	Filed consent & pre-trial order. So ordered- CANNELLA, J.	
Jan. 27-75	Pre-trial conference held by Raby, U.S. Mag.	
Aug. 7-75	Filed Pliff's Legal Memorandum.	
Aug. 8-75	Filed Deff's Trial Memorandum.	
Oct. 06-75	Filed Deff's Reply to Pliff's Trial Memorandum	
08-23-76	Filed Opinion and Order No. 11999 Pliff is entitled to a partial refund of overpayments of federal income tax made by it in 1967 and 1968, etc. as indicated - The parties are therefore directed to either stipulate regarding the amts attributable to sales of Butterick patterns, or to prepare for trial on that issue. So Ordered. CANNELLA, J. m-n	
11-29-76	PRE-TRIAL CONFERENCE: CANNELLA, J.	
03-31-77	Filed stip & order-- that the Butterick Division of American Can Co. in 1967 and 1968 had net sales of Butterick Patterns other than Vogue patterns as indicated, etc.. that pursuant to the Opinion & Order of 8-23-76, pliff is entitled to judgment in the sum of \$ 16,873 for overpayment of 1967 income taxes, plus interest according to law, and judgment in the sum of \$22,482 for overpayment of 1968 income taxes, plus interest according to law, etc.. So ordered- CANNELLA, J.	
03-31-77	Filed Judgment No. 77,155 in favor of pliff and against deff in the sum of \$16,873.00 for overpayment of 1967 income taxes and sum of \$9,645.15 as int. plus sum of \$22,482.00 for overpayment for 1968 income taxes and sum of \$11,502.53 as int, for a total sum of \$60,502.78. CANNELLA, J. JUDGMENT ENTERED 4-1-77. RAYMOND F. BURGHARDT, CLERK. m-n	
05-31-77	Filed Amended Judgment No. 77,728 in favor of pliff and against deff in the sum of \$16,873.00 for overpayment of 1967 income taxes plus int. etc. together with sum of \$22,482.00 for overpayment of 1968 income taxes plus int.. CANNELLA, J. JUDGMENT ENTERED 5-31-77. CLERK m-n Ent. 5-31-77.	
05-31-77	Filed NOTICE OF APPEAL of deff USA to USCA 2nd Circuit from judgment and amended judgment based on Opinion of Cannela, J filed 8-23-77. mailed copy to: Sabin, Berman & Blau, attys for Pliff, 350 Madison Ave. NYC 10017	
06-10-77	Filed pliff's notice of cross-appeal to the USCA from the Judgment dated and entered 3-31-77 and the Amended Judgment entered 5-31-77. C py mailed to: U.S. Attorney, SDNY. Ent. 6-10-77	

United States District Court

JUDGE CANNELLA

FOR THE

SOUTHERN DISTRICT OF NEW YORK

23 CIV. 49 09

CIVIL ACTION FILE NO. _____

THE CONDE NAST PUBLICATIONS INC.,

THE UNITED STATES OF AMERICA,
Plaintiff
v.
THE CONDE NAST PUBLICATIONS INC.,
Defendant

SOUTHERN DISTRICT OF NEW YORK
Judicial District Court

23 CIV. 49 09

Summons in Civil Action

after service
Returnable not later than 60 days

to Court
Answer due Jan 15-1974
Sabin, Berman & Blau
Summons
Appointed for Plaintiff

To the above named Defendant :

You are hereby summoned and required to serve upon **Sabin, Berman & Blau**
 (Name of Defendant) and to take such action as may be required to defend against the claims of the Plaintiff.

[SEAL]

Plaintiff's attorney, whose address is **350 Madison Avenue, New York, New York 10017**,
 is described and sworn to before me as

Deputy United States Marshal

B/

answer to the complaint which is herewith served upon you, within **60** days after service of this
the United States Attorney for the Southern District of New York
 summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
 taken against you for the relief demanded in the complaint.

/s/ Raymond F. Burahardt
 Clerk of Court.

/s/ E. A. Becker
 Deputy Clerk.

Date: **November 13, 1973**

[Seal of Court]

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

I hereby certify and return, that on the

day of

19

RETURN ON SERVICE OF MAIL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CONDÉ NAST PUBLICATIONS INC.,

Plaintiff,

-against-

COMPLAINT

THE UNITED STATES OF AMERICA,

Defendant.

1. Plaintiff The Condé Nast Publications Inc. is a New York corporation with its principal office and place of business located at 350 Madison Avenue, New York, New York 10017.

2. Defendant is The United States of America.

3. This is a suit arising under the Internal Revenue Laws of the United States for the refund of taxes overpaid by plaintiff.

4. Jurisdiction is conferred upon this Court by 28 U.S.C. §1346(a)(1).

COUNT ONE

(Calendar Year 1967)

5. Plaintiff timely filed its federal income tax return for the calendar year 1967 and paid the taxes reported due on said return.

6. On March 8, 1972 and June 15, 1972, plaintiff paid Internal Revenue Service the sum of \$98,842.23, representing an additional assessment of income tax for the year 1967, together with interest thereon.

7. On January 15, 1973, plaintiff timely filed a Claim for Refund of \$36,913.00 for overpayment of 1967 income taxes. Exhibit "A" hereto is a true copy of the Claim for Refund.

8. More than six months have elapsed since the filing of the Claim for Refund, which claim has been neither allowed nor disallowed by the Internal Revenue Service.

9. As grounds for recovery, plaintiff incorporates herein by reference the averments contained in the Claim for Refund for the calendar year 1967, Exhibit "A".

10. Plaintiff has made an overpayment of federal income taxes for the calendar year 1967 and is entitled to recover from defendant the sum of \$36,913.00, plus statutory interest, no part of which has been repaid to plaintiff.

11. Plaintiff is the sole owner of this claim against defendant and has made no assignment of this claim.

COUNT TWO

(Calendar Year 1968)

12. Plaintiff timely filed its federal income tax return for the calendar year 1968 and paid the taxes reported due on said return.

13. On March 8, 1972 and June 15, 1972, plaintiff paid Internal Revenue Service the sum of \$91,543.18, representing an additional assessment of income tax for the year 1968, together with interest thereon.

14. On January 15, 1973, plaintiff timely filed a Claim for Refund of \$45,865.00 for overpayment of 1968 income taxes. Exhibit "B" hereto is a true copy of the Claim for Refund.

15. More than six months have elapsed since the filing of the Claim for Refund, which claim has been neither allowed nor disallowed by the Internal Revenue Service.

16. As grounds for recovery, plaintiff incorporates herein by reference the averments contained in the Claim for Refund for the calendar year 1968, Exhibit "B".

17. Plaintiff has made an overpayment of federal income taxes for the calendar year 1968 and is entitled to recover from defendant the sum of \$45,865.00, plus statutory interest, no part of which has been repaid to plaintiff.

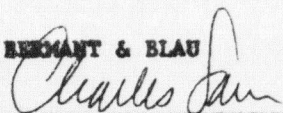
18. Plaintiff is the sole owner of this claim against defendant and has made no assignment of this claim.

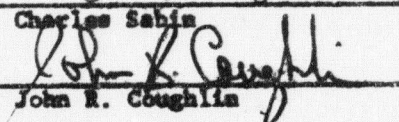
WHEREFORE, plaintiff prays for judgment against defendant in the total amount of \$82,778.00 and such further relief to which plaintiff may be entitled, together with costs and interest as provided by law.

Dated: November 13, 1973

SABIN, BERDMANT & BLAU

By


Charles Sabin


John R. Coughlin

Attorneys for Plaintiff
350 Madison Avenue
New York, New York 10017
Tel. No. (212) 953-0400

Form 843

(Rev. June 1968)

U.S. Treasury Department
Internal Revenue Service

Claim A 7

Director's Stamp
(Date received)

The Internal Revenue Service will indicate in the block below the kind of claim filed, and fill in, where required.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assess (not applicable to income, estate or gift taxes).

Please Type or Print Plainly

Name of taxpayer or purchaser of stamps

The Conde Nast Publications Inc. c/o S.I. Newhouse

Number and street

92-20 168th Street

City or town, State, and ZIP code

Jamaica, New York 11433

Fill in applicable items—Use attachments if necessary

a. Your social security number

Wife's number, if joint return

b. Employer identification number (if any)

06-0301830

c. Internal Revenue Service office where re-
turn (if any) was filed

d. Name and address shown on return, if different from above

120 Church Street, N.Y., N.Y.

420 Lexington Avenue, New York, New York 10017

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year
From January 1, 1967 to December 31, 1967f. Kind of tax
Income

g. Amount of assessment

\$ 2,361,619.23 (a)

Dates of payment

4/12/67, 6/13/67, 9/13/67, 12/13/67, 3/8/72 and 6/15/72

h. Date stamps were purchased from Govern-
menti. Amount to be refunded (If income tax,
complete computation below)

\$ 36,913 (b)

j. Amount to be abated (not applicable to income, es-
tate, or gift taxes)

\$

k. The claimant believes that this claim should be allowed for the following reasons:

(a) Includes interest of \$18,886.23

(b) Plus interest and any other amount to which claimant is legally entitled.

See Statement Attached

COMPUTATION OF INCOME TAX REFUND

Income Tax

1 Tax withheld	2,332,500.00
2 Estimated tax paid	
3 Tax paid with original return	98,842.23
4 Any additional income tax paid	2,431,342.23
5 Total tax paid (add lines 1-4)	2,324,706.23
6 Less: Your computation of correct tax	106,636.00
7 Amount of overpayment	69,723.00
8 Amount previously refunded	36,913.00
9 Net overpayment (enter in item i above)	

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

The Conde Nast Publications Inc.

Signed

by:

Dated, 19

SEE INSTRUCTIONS ON REVERSE

Form 843 (Rev. 6-68)

In 1961, claimant sold its pattern business to The Butterick Company, Inc. An indispensable asset transferred in this sale was a trade-mark and trade-name which claimant used in this pattern business as well as other business conducted by claimant. The transfer of this trade-mark or trade-name to The Butterick Company, Inc. was restricted to use in the pattern business which claimant sold.

Under the terms of the agreement between claimant and The Butterick Company, Inc., payments were to be made on the closing date as well as during the period during which The Butterick Company, Inc. used the trade-mark and trade-name in the pattern business. Such periodic payments were based in the volume of sales derived from the pattern business.

Payments received in 1961 and subsequently constitute receipts from the sale of capital assets held for more than 6 months taxable in accordance with Internal Revenue Section 1201. Claimant erroneously treated payments received in 1967 as ordinary royalty income and overpaid its income tax as follows:

	<u>As Last Determined</u> <u>(per RAR dated 3/17/72)</u>	<u>As Corrected</u> <u>by Form 843</u>
Taxable income before correction	\$5,243,080	\$5,243,080
Net long term capital gain	512,617	512,617
Periodic payment received from The Butterick Company, Inc.		160,492
<u>Total net long term capital gain</u>	<u>512,617</u>	<u>673,109</u>
Balance	<u>4,730,463</u>	<u>4,569,971</u>
Tax on balance	2,265,622	2,188,586
Tax on net long term capital gain	<u>128,154</u>	<u>168,277</u>
<u>Total</u>	<u>2,393,776</u>	<u>2,356,863</u>
Foreign tax credit	39,609	39,609
Investment credit	<u>11,676</u>	<u>11,676</u>
<u>Total credits</u>	<u>51,285</u>	<u>51,285</u>
<u>Balance</u>	<u>2,342,491</u>	<u>2,305,578</u>
Interest on additional assessment	18,886.23	18,886.23
Tax from recomputing prior year investment credit	<u>242</u>	<u>242</u>
<u>Income tax liability as last determined</u>	<u>2,361,619.23</u>	
<u>Correct income tax liability</u>	<u>2,324,706.23</u>	<u>\$2,324,706.23</u>
<u>Overpayment</u>	<u>\$ 36,913</u>	

Form 843

(Rev. June 1968)

U.S. Treasury Department
Internal Revenue ServiceClaim ^A 10Director's Stamp
(Date received)

The Internal Revenue Service will indicate in the block below the kind of claim filed, and fill in, where required.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to income, estate or gift taxes).

Please Type or Print Plainly

Name of taxpayer or purchaser of stamps

The Conde Nast Publications Inc. c/o S.I. Newhouse

Number and street

92-20 168th Street

City or town, State, and ZIP code

Jamaica, New York 11433

Fill in applicable items—Use attachments if necessary

a. Your social security number

Wife's number, if joint return

b. Employer identification number (if any)

06-0301830

c. Internal Revenue Service office where return (if any) was filed

d. Name and address shown on return, if different from above

35 Tillary St., Brooklyn, N.Y.

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year

From January 1, 1968, to December 31, 1968

f. Kind of tax

Income

g. Amount of assessment

\$3,118,362.18 (a)

Dates of payment

4/10/68, 6/11/68, 7/10/68, 9/12/68, 12/13/68, 3/8/72 & 6/15/72

h. Date stamps were purchased from Government

i. Amount to be refunded (if income tax, complete computation below)

\$ 45,865 (b)

j. Amount to be abated (not applicable to income, estate, or gift taxes)

\$

k. The claimant believes that this claim should be allowed for the following reasons:

(a) Includes interest of \$14,010.18.

(b) Plus interest and any other amount to which claimant is legally entitled.

See Statement Attached

COMPUTATION OF INCOME TAX REFUND

Income Tax

1 Tax withheld	3,070,000.00
2 Estimated tax paid	91,543.18
3 Tax paid with original return	3,161,543.18
4 Any additional income tax paid	3,072,497.18
5 Total tax paid (add lines 1-4)	89,046.00
6 Less: Your computation of correct tax	43,181.00
7 Amount of overpayment	45,865.00
8 Amount previously refunded	
9 Net overpayment (enter in item i above)	

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signed The Conde Nast Publications Inc.

by:

Dated _____, 19____

SEE INSTRUCTIONS ON REVERSE

Form 843 (Rev. 6-68)

In 1961, claimant sold its pattern business to The Butterick Company, Inc. An indispensable asset transferred in this sale was a trade-mark and trade-name which claimant used in this pattern business as well as other business conducted by claimant. The transfer of this trade-mark or trade-name to The Butterick Company, Inc. was restricted to use in the pattern business which claimant sold.

Under the terms of the agreement between claimant and The Butterick Company, Inc., payments were to be made on the closing date as well as during the period during which The Butterick Company, Inc. used the trade-mark and trade-name in the pattern business. Such periodic payments were based in the volume of sales derived from the pattern business.

Payments received in 1961 and subsequently constitute receipts from the sale of capital assets held for more than 6 months taxable in accordance with Internal Revenue Section 1201. Claimant erroneously treated payments received in 1968 as ordinary royalty income and overpaid its income tax as follows:

	As Last Determined (per RAR dated 3/17/72)	As Corrected by Form 843
Taxable income before correction	<u>\$6,131,943</u>	<u>\$6,131,943</u>
Net long term capital gain	100	100
Periodic payment received from The Butterick Company, Inc	<u> </u>	<u>181,286</u>
<u>Total net long term capital gain</u>	<u>100</u>	<u>181,386</u>
Balance	<u>6,131,843</u>	<u>5,950,557</u>
Tax on balance	2,938,284	2,851,267
Tax on net long term capital gain	<u>25</u>	<u>45,347</u>
<u>Total</u>	2,938,309	2,896,614
Tax surcharge	<u>293,831</u>	<u>289,661</u>
<u>Total</u>	<u>3,232,140</u>	<u>3,186,275</u>
Foreign tax credit	114,371	114,371
Investment credit	<u>13,768</u>	<u>13,768</u>
<u>Total credits</u>	<u>128,139</u>	<u>128,139</u>
<u>Balance</u>	3,104,001	3,058,136
Interest on additional assessment	14,010.18	14,010.18
Tax from recomputing prior year investment credit	<u>351</u>	<u>351</u>
<u>Income tax liability as last determined</u>	3,118,362.18	
<u>Correct income tax liability</u>	<u>3,072,497.18</u>	<u>\$3,072,497.18</u>
<u>Overpayment</u>	<u>\$ 45,865</u>	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CONDE NAST PUBLICATIONS INC., :

Plaintiff, :

-v- :

THE UNITED STATES OF AMERICA, :

Defendant. :

73 Civ. 4909 (JMC)

Defendant, The United States of America, by its attorney, Paul J. Curran, United States Attorney for the Southern District of New York, for its answer to the complaint herein, alleges upon information and belief, as follows:

1. Admits paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15 and 18.
2. Denies each and every allegation contained in paragraphs 9, 10, 16 and 17.

WHEREFORE, defendant demands judgment dismissing the complaint plus the costs and disbursements of defending this action as well as such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 21, 1974.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Defendant.

By: Mel P. Barker
MEL P. BARKER
Assistant United States Attorney
Office & P.O. Address:
United States Courthouse
Foley Square, New York, N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CONDÉ NAST PUBLICATIONS INC.,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA, ,

Defendant.

PRE-TRIAL ORDER

73 Civ. 4909 JMC

On January 27, 1975, the parties in this action or their attorneys appeared before the Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken.

1. The parties agreed that all legal and factual determinations in this action shall be made by the Court without a jury and shall be based solely upon this Pre-Trial Order without the necessity of testimony at trial.

2. The parties agreed that plaintiff's sole claims are those set forth in Paragraph 3(b) hereof and defendant's sole defenses are those set forth in Paragraph 3(c) hereof and that the pleadings are deemed to be amended in accordance with the framing of the issues in this action in Paragraph 4 of this Pre-Trial Order.

3.(a) The parties stipulated the truth of the facts and authenticity of the exhibits contained in "Stipulation of Facts and Exhibits", submitted together with this Pre-Trial Order.

(b) The plaintiff's contentions as to liability and damages are as follows:

(1) Defendant erroneously assessed and collected federal income taxes for calendar year 1967 in the amount of \$36,913.00 by erroneously treating payments made to plaintiff by

The Butterick Company, Inc. (Butterick) in 1967 pursuant to their License Agreement as ordinary income when all such payments constituted receipts from the sale of capital assets held for more than six months, subject to tax in accordance with 26 U.S.C. §1201. Accordingly, plaintiff is entitled to a tax refund of \$36,913.00, plus statutory interest, for the tax year 1967.

(ii) Defendant erroneously assessed and collected federal income taxes for calendar year 1968 in the amount of \$45,865.00 by erroneously treating payments made to plaintiff by Butterick in 1968 pursuant to their License Agreement as ordinary income when all such payments constituted receipts from the sale of capital assets held for more than six months, subject to tax in accordance with 26 U.S.C. §1201. Accordingly, plaintiff is entitled to a tax refund of \$45,865.00, plus statutory interest, for the tax year 1968.

(c) The defendant's contentions as to liability and damages are as follows:

(i) In determining plaintiff's federal income tax liability for calendar year 1967, defendant properly treated all payments made to plaintiff by Butterick in 1967 pursuant to their License Agreement as ordinary income. Accordingly, plaintiff is not entitled to a tax refund in any amount for tax year 1967.

(ii) In determining plaintiff's federal income tax liability for calendar year 1968, defendant properly treated all payments made to plaintiff by Butterick in 1968 pursuant to their License Agreement as ordinary income. Accordingly, plaintiff is not entitled to a tax refund in any amount for tax year 1968.

(iii) If plaintiff is entitled to treat any of the payments made to plaintiff by Butterick in 1967 and in 1968 pursuant to their License Agreement as subject to tax in

accordance with 26 U.S.C. §1201 which defendant expressly denies, then the amount of payments which are entitled to such capital gains treatment in each calendar year equals the total of all such payments during the calendar year minus the actual cost of production to Condé Nast (allowed in such years as ordinary and necessary business expenses) of all editorial space furnished during the year by plaintiff to Butterick in accordance with their License Agreement. Thus, for 1967, \$117,805.00, not \$160,492.00, was subject to tax in accordance with 26 U.S.C. §1201 and \$42,687.00 was subject to tax as ordinary income, and for 1968, \$132,019.55, not \$181,286.00, was subject to tax in accordance with 26 U.S.C. §1201 and \$49,266.45 was subject to tax as ordinary income.

4. The issues to be decided are formulated by the Court with the consent of the parties as follows:

(a) Were payments received by plaintiff from Butterick in 1967 and in 1968 pursuant to their License Agreement receipts from the sale of capital assets held for more than six months and subject to federal income tax in each year pursuant to 26 U.S.C. §1201?

(b) If payments received by plaintiff from Butterick in 1967 and in 1968 were receipts from the sale of capital assets held for more than six months and subject to tax pursuant to 26 U.S.C. §1201, is plaintiff entitled to such capital gains treatment on all payments in each year, or is such capital gains treatment appropriate only on an amount in each year which equals the total of all royalty payments received during the year minus the actual cost of production to Condé Nast (allowed in such years as ordinary and necessary business expenses) of editorial space furnished during the year by plaintiff to Butterick pursuant to the License Agreement?

Dated: New York, New York
~~January 27, 1975~~
February 3, 1975

SO ORDERED:

5 JOHN M. CANNELLA
U.S.D.J.

CONSENTED TO:

John R. Caughlin
Sabin, Bermant & Blau
Attorneys for Plaintiff

PAUL J. CURRAN
United States Attorney (S.D.N.Y.)
Attorney for Defendant

By: William G. Ballaine
WILLIAM G. BALLAINE
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CONDÉ NAST PUBLICATIONS INC.,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA,

Defendant.

STIPULATION OF
FACTS AND EXHIBITS

73 Civ. 4909 JMC

Without conceding the relevance or materiality of any of the facts hereinafter set forth, the parties stipulate the following statements are not in dispute and shall be taken as true and proven for the purpose of this action, and the documents hereinafter mentioned are authentic.

1. Prior to 1961, The Condé Nast Publications Inc. (Condé Nast) was actively engaged in the business of publishing and printing magazines such as VOGUE, HOUSE & GARDEN, GLAMOUR and MADEMOISELLE and was also actively engaged in the business of designing, manufacturing and selling Vogue paper dress patterns in the United States and elsewhere in the world.

2. In connection with its pattern business, operated from offices at 420 Lexington Avenue, New York, New York, and its plant in Greenwich, Connecticut, Condé Nast published certain periodicals, counter catalogs, fashion folders and other promotional material, which, along with the patterns, used the trademark and name "Vogue", which trademark and name is registered throughout the world for patterns and publications and has been for the greater part of this century.

3. On January 20, 1961, Condé Nast entered into an agreement to sell its Vogue Pattern business to The Butterick

Company, Inc. (Butterick) as a going concern (the Sales Agreement). A copy of the Sales Agreement is annexed hereto as Exhibit A.

Prior to 1961, Butterick was in the pattern business, published a trade magazine in the food and grocery fields, and operated a marketing and research organization. An essential element of the sale was the right of Butterick to continue use of the name "Vogue" in conjunction with the pattern business. No Sales Agreement would have been executed by Butterick if it did not have the right to use the Vogue name in connection with the pattern business purchased from Condé Nast. In announcing the sale of its pattern business to Butterick, plaintiff stated that "the existing liaison with the Condé Nast editorial and art departments, as well as its fashion publication, will be maintained".

Since Condé Nast was publishing VOGUE Magazine and wished to continue the use of the trademark and name "Vogue" in conjunction with its fashion magazine, a "License Agreement" was devised between the parties as part of the total Sales Agreement.

4. On March 31, 1961, Butterick and Condé Nast entered into an agreement which amended certain provisions of the Sales Agreement not here pertinent and on the same date executed a "License Agreement" in furtherance of the Sales Agreement. A copy of the 1961 License Agreement is annexed hereto as Exhibit B.

5. Under the License Agreement, Condé Nast was to receive semi-annually a "royalty" based upon a percentage of Butterick's gross receipts from the sale of all patterns made by Butterick including, but not limited to, patterns bearing the "Vogue" tradename. Condé Nast also agreed, among other

things, to provide Butterick at no cost with editorial space featuring Vogue Patterns in its VOGUE, GLAMOUR and MADEMOISELLE Magazines. Prior to the sale of the pattern business, Butterick had no contracts giving Butterick the right to minimum editorial space in any fashion magazines.

6. In 1967, in connection with the purchase by American Can Company of all of Butterick's assets and business, Condé Nast and Butterick entered into a new License Agreement dated November 10, 1967, effective as of March 31, 1961, which Agreement in all respects here material is substantially similar to the 1961 License Agreement. A copy of the 1967 License Agreement is annexed hereto as Exhibit C. (For purposes of this Stipulation and Pre-Trial Order, the 1961 License Agreement and 1967 License Agreement, when considered together, are referred to simply as the License Agreement.)

7. In 1967, Condé Nast received \$160,492.00 and in 1968 \$181,286.00 from Butterick pursuant to the terms of the License Agreement.

8. In the years indicated below, Condé Nast devoted editorial space to Butterick Patterns, which patterns were not exclusively "Vogue" trademark patterns, in the number of pages indicated:

<u>Year</u>	<u>Vogue</u>	<u>Glamour</u>	<u>Mademoiselle</u>
1961	22	4 5/6	18
1962	6	4 2/3	8
1963	20		8
1964	20	16	8
1965	20	5 5/6	8
1966	20	5	8
1967	20	3 1/3	6
1968	20	10 1/3	6
1969	20	9 1/2	8
1970	20	12 1/3	6
1971	19	27 1/3	36
1972	20	37	43
1973	20	55	37

Publication of this pattern editorial material was not solely motivated by the terms of the License Agreement, but was in response to the interest of the magazine readers. Other fashion magazines also publish pattern editorial material in response to their readers' interests, although not contractually obligated to do so.

The actual cost to Condé Nast, i.e., the direct cost of editorial make-up, printing and paper, to produce the editorial pages in accordance with the License Agreement in 1967 was \$42,687.00 and in 1968 was \$49,266.45.

9. The primary purpose of Sections 1, 2, 3, 6, 10(d) and 11(a) in the 1961 License Agreement (and their equivalent provisions in the 1967 License Agreement) was to preserve the value and reputation of the "Vogue" tradename. However, other than as indicated in this Stipulation, there is no direct evidence that:

(a) Condé Nast objected to the standards and quality of Butterick's patterns bearing the name "Vogue" (Section 1);

(b) Condé Nast examined, or requested Butterick to examine, the patterns and promotional materials bearing the name "Vogue" for the purpose of ascertaining the standards and quality of the patterns or for any other reason (Section 2);

(c) Condé Nast complained of Butterick's method of advertising or distributing patterns (Section 3);

(d) The editorial staffs of Condé Nast's magazines, with or without cost, advised and assisted Butterick with respect to fashion trends and current fashion information. (However, the editorial staffs of Condé Nast's magazines and Butterick confer on the selection of Butterick's patterns featured in its magazines.) (Section 6);

(e) Butterick requested the assignment of the License Agreement (Section 11[a]); or

(f) Condé Nast ever terminated or threatened to terminate the License Agreement for any reason (Section 10).

10. By letter dated December 26, 1967, Condé Nast registered its concern to Butterick over the logo used on the Vogue Pattern Book, which correspondence and the Butterick response of January 8, 1968 are annexed as Exhibit D. In 1969 and 1970, Condé Nast and Butterick corresponded with respect to Butterick's use of the name "Vogue", which correspondence is annexed as Exhibit E.

11. Attached as Exhibit F are two documents found in the files of Condé Nast.

12. For the years prior to 1967 (1963, 1964, 1965 and 1966), Condé Nast treated payments received from Butterick pursuant to the License Agreement as ordinary income for federal income tax purposes.

13. At all relevant times, up to and including the tax years in question, for federal income tax purposes Butterick deducted the sums paid Condé Nast under the License Agreement as part of the cost of goods sold.

14. Condé Nast timely filed its federal income tax return for the calendar year 1967 and paid the taxes reported due on said return.

15. On March 8, 1972 and June 15, 1972, Condé Nast paid Internal Revenue Service the sum of \$98,842.23, representing an additional assessment of income tax for the year 1967, together with interest thereon.

16. On January 15, 1973, Condé Nast timely filed a Claim for Refund of \$36,913.00 for overpayment of 1967 income taxes.

17. Condé Nast timely filed its federal income tax return for the calendar year 1968 and paid the taxes reported due on said return.

18. On March 8, 1972 and June 15, 1972, Condé Nast paid Internal Revenue Service the sum of \$91,543.18, representing an additional assessment of income tax for the year 1968, together with interest thereon.

19. On January 15, 1973, Condé Nast timely filed a Claim for Refund of \$45,865.00 for overpayment of 1968 income taxes.

20. More than six months have elapsed since the filing of the Claims for Refund, which claims have been neither allowed nor disallowed by the Internal Revenue Service.

21. Condé Nast is the sole owner of these claims against defendant and has made no assignment of these claims.

SABIN, BERMANT & BLAU
Attorneys for Plaintiff
The Condé Nast Publications Inc.

UNITED STATES OF AMERICA

By

John R. Coughlin
John R. Coughlin

By

William G. Ballaine
William G. Ballaine

Agreement

BETWEEN

THE CONDÉ NAST PUBLICATIONS INC.

AND

THE BUTTERICK COMPANY, INC.

Dated January 20, 1961

AGREEMENT made this 20th day of January, 1961, by and between THE CONDÉ NAST PUBLICATIONS INC., a New York corporation, having a principal office at No. 420 Lexington Avenue, New York, New York (hereinafter called "Nast"), and THE BUTTERICK COMPANY, INC., a New York corporation, having a principal office at No. 161 Sixth Avenue, New York, New York (hereinafter called "Butterick"),

WITNESSETH :

WHEREAS, Nast is engaged principally in the business of publishing and printing magazines and directly, or indirectly through wholly owned English and Australian subsidiaries hereinafter described, is also engaged in the business of designing, manufacturing and selling paper dress patterns in the United States and elsewhere in the world; and uses the trade-mark and trade-name "Vogue" in conjunction with the sale of such patterns; and said patterns are manufactured and sold in a high style and price line; and such pattern business has been operated at a financial loss for a number of years last past; and

WHEREAS, Butterick directly, or indirectly through wholly owned English and Australian subsidiaries hereinafter described, among other businesses, is engaged in the business of designing, manufacturing and selling paper dress patterns in the United States and elsewhere in the world; and uses the trade-mark and trade-name "Butterick" in conjunction with the sale of such patterns; and said patterns are manufactured and sold in the low priced field; and such pattern business has been operated at a financial loss for a number of years last past; and

WHEREAS, as an adjunct to and as a part of said pattern business, Nast publishes and for some time has published certain periodicals, pattern counter catalogs, fashion folders and other

promotion material, and in conjunction therewith uses the trade-mark and name "Vogue"; and

WHEREAS, Nast has determined to cease the designing, manufacturing and selling of patterns and the publishing of the magazines and other printed material used in conjunction therewith, and the parties desire to make arrangements to permit Butterick to use the trade-mark and trade-name "Vogue" in conjunction with the designing, manufacturing and selling of patterns by Butterick and the use of such name in conjunction with certain publications solely related thereto; and

WHEREAS, Nast and its subsidiaries have certain obligations under existing pattern contracts with merchants throughout the world, and desire to make arrangements to carry out such obligations;

Now, THEREFORE, in consideration of the premises and the mutual covenants herein contained, it is agreed between the parties as follows:

1. On the closing date (as hereinafter defined) Nast will:

(a) Execute and deliver to Butterick a license and royalty agreement authorizing Butterick to use exclusively the name "Vogue" on patterns and certain publications, such license and royalty agreement to be in the form attached as Exhibit A.

(b) Authorize Butterick in writing to use the space, equipment and utilities now used by the creative, art and pattern statistical departments of Nast at its plant in Greenwich, Connecticut, on the basis of a charge to Butterick of \$2000.00 per month; such use to be limited to a period ending June 30, 1962, subject to the right of Butterick to terminate such use, in whole or in part, on sixty (60) days' notice, in writing, to Nast. In the event that such use be partially terminated, said monthly charge shall be reduced in

proportion to the reduction in the square footage of space so reduced and to any reduction in the use of utilities.

(c) Subject to the obtaining of the landlord's written consent, execute and deliver to Butterick a sublease covering certain premises on the third floor of the Graybar Building, 420 Lexington Avenue, New York City, now occupied by Nast under a lease dated December 23, 1957, between Webb and Knapp, Inc. and Graysier Corporation as landlords, and Nast as tenant, upon the same terms and conditions as therein provided for the balance of the term of said lease, less one day; or in the alternative, deliver an assignment of said lease to Butterick upon Butterick's written assumption of the liabilities and obligations arising on and after the closing date; and, prior to the closing date, Nast will use its best efforts to secure the written consent of said landlords to such sublease or assignment, as the case may be.

(d) Execute and deliver to Butterick written authorization to permit Butterick to use the name of Nast on bills and statements for billing merchants for patterns and outstanding accounts receivable for a period not exceeding twelve months subsequent to the closing date, such bills and statements to contain an appropriate reference thereon that the billing is for the account of Butterick.

(e) Execute and deliver to Butterick an assignment, in writing, of all accounts receivable owed to Nast arising out of the sale of patterns by Nast to its customers, the aggregate amount of which shall be certified by Nast on the closing date. During the period commencing from the closing date to July 31, 1961, Butterick shall maintain a separate adjustment account relating to such accounts receivable, and if, at the end of business on July 31, 1961, the aggregate sum of such accounts, as computed in the manner hereafter provided, shall be less than \$600,000, Nast shall, within ten (10) days after receipt of written notice from Butterick, pay to Butterick, in cash, a sum equal to such deficiency; but if the aggregate sum

of such account shall exceed \$600,000, Butterick shall, within ten days thereafter, pay to Nast, in cash, a sum equal to such excess.

The aggregate amount of such account, as of the end of business on July 31, 1961, shall be computed by the application of the following formula:

From the amount of the accounts receivable in existence on the closing date (as so certified), there shall be deducted (i) the sum of all uncollectible accounts receivable; and (ii) all credits to customers for patterns returned by said customers for full credit in the usual course of business.

(f) Execute and deliver to Butterick a written assignment of all outstanding contracts between Nast and retail merchants relating to the pattern business, upon Butterick's written assumption of all of Nast's obligations with respect to the performance of such contracts subsequent to said closing date.

(g) Execute and deliver to Butterick a bill of sale transferring its ownership of all pattern racks owned by it on the closing date, which Butterick at its option elects to purchase, against payment therefor at Nast's cost.

(h) Execute and deliver to Butterick a bill of sale of a Fay envelope machine, Serial No. 159, against payment therefor by Butterick of the sum of \$4,600.

(i) Execute and deliver to Butterick a bill of sale of all cabinets used for store retail storage owned by Nast on the closing date, and Nast agrees to store such cabinets until June 30, 1962, without cost to Butterick, subject to the instructions of Butterick, and to ship such cabinets in whole or in part pursuant to the instructions of Butterick against payment by Butterick of any transportation costs involved; and

Butterick shall pay for said cabinets on the basis of Nast's cost.

(j) Execute and deliver to Butterick an agreement (a copy of which agreement has been initialed by the parties hereto) imposing certain restrictions concerning the disposal of the shares of common stock to be received by Nast on the closing date and referred to in Paragraph 14 and with respect to any shares of common stock issued upon the conversion of any of the notes referred to in Paragraph 16 of this agreement.

2. On the shipment closing date (as hereinafter defined) Nast will execute and deliver to Butterick a bill of sale of all inventories of merchantable and usable finished patterns then owned by Nast, and Butterick shall pay the cost of transportation thereof.

3. On the final closing date (as hereinafter defined) Nast will:

(a) Execute and deliver to Butterick a bill of sale of all of its inventories of raw materials and other items used in the manufacture of patterns and any work in process, against payment by Butterick by promissory note in the manner provided for in paragraph 16 hereof of Nast's cost. Butterick shall have the right to reject any raw materials or other items that are not merchantable or usable in the normal course of business as conducted by Butterick. During the period between the closing and the final closing dates Nast will make no purchases of raw materials and other items for use in the manufacture of patterns, except in the ordinary course of business, without the written approval of Butterick.

(b) Execute and deliver to Butterick a bill of sale of certain machinery and equipment (Exhibit B hereof), for the prices set forth in such exhibit against payment by Butterick by promissory note in the manner provided for in

paragraph 16 hereof. Butterick shall be responsible for the dismantling, removal and transportation, and the cost thereof.

4. At any time between the closing date and the final closing date, Butterick may elect to purchase any of the machinery or equipment referred to in Exhibit B upon payment of the price or prices therein stated, providing, however, that such right shall not extend to any machinery or equipment needed by Nast to perform its obligations under this contract.

5. (a) During the period from the closing date to the shipment closing date, Nast will manufacture and ship patterns bearing the name "Vogue" for the account of Butterick as requested by Butterick in accordance with designs to be furnished by Butterick on a basis of 12 cents per pattern, the cost of transportation, and duty, if any, to be paid by Butterick, with respect to all patterns manufactured and shipped to customers pursuant to the request of Butterick, and on the basis of 8 cents per pattern, plus the cost of transportation, with respect to all patterns manufactured and shipped to Butterick pursuant to the request of Butterick. During such period Nast will continue to maintain all shipping branches now maintained and operated by Nast. Nast shall bill Butterick monthly for all patterns shipped to customers or to Butterick pursuant to the request of Butterick and Butterick shall pay therefor within twenty days of the receipt of such statements.

(b) During the period from the shipment closing date to the final closing date, Nast will manufacture and ship for the account of Butterick any and all such patterns requested by Butterick in accordance with the designs to be furnished by Butterick on a basis of 8 cents per pattern, plus the cost of transportation, on patterns shipped pursuant to the instructions of Butterick. During this period, Nast shall have no further responsibility to maintain the above mentioned distribution branches, and other than to make shipments in bulk in accordance with Butterick's

instructions, shall cease making shipments to customers of Butterick. Payment shall be made by Butterick with respect to such patterns in the same manner provided in Paragraph 5(a) above.

(c) During the period subsequent to the shipment closing date, Butterick shall furnish Nast with monthly statements advising Nast of all sales made of patterns that constituted a part of the finished pattern inventory transferred on the shipment closing date, and at the time of each such monthly statement shall make payment to Nast of a sum equal to 8 cents for each pattern so sold. Butterick shall have the sole right to determine what, if any, of such patterns are to be sold and, in the event notice of an intention not to sell any pattern is sent to Nast and to customers by Butterick, the parties agree that Butterick's accountability for retention or otherwise with respect to any remaining patterns then in the possession of Butterick shall cease.

6. From the closing date until December 31, 1961:

(a) Nast will provide, upon request of Butterick, the services of certain of Nast's general administrative personnel (hereinafter described), and should Butterick elect to make use of such personnel, Nast shall charge Butterick at the rate of \$6,275 per month and Butterick shall make payment therefor within twenty days after the date of each bill. The personnel to be made available to Butterick shall be:

<u>Department</u>	<u>No. of Employees</u>
Tabulating	6
Cost Accounting	2
Accounts Receivable	4
Mail Cage	1
Pay Roll	1
Purchasing	1

The services to be performed by said employees in the above mentioned departments shall consist of the tabulating, cost accounting, accounts receivables, mail, pay roll, and purchasing services substantially in the same manner in which such services are performed by Nast for the pattern business as now conducted by Nast. In the event that the use of such services shall be reduced or in due course eliminated, said monthly charge shall be reduced in proportion to the reduction in the use of such services until the same have been completely dispensed with by Butterick.

(b) Nast will permit Butterick or the above mentioned employees to use the International Business Machine Company tabulating equipment now located in the Greenwich office of Nast to the extent and in the same manner in which such equipment is now used by Nast in the pattern business as now conducted by Nast. So long as such equipment is so used by Butterick, Butterick shall pay to Nast the sum of \$2,100 per month, such payment to be made within twenty days after the receipt of each bill.

7. On the closing date, Nast will:

(a) Execute and deliver to Butterick a bill of sale covering all work in process for issues of "Vogue Pattern Book" upon which any preparatory work has been done for any issue to be put on sale after the closing date, including photographs, drawings, other art work, engravings and printed pages, against reimbursement by Butterick of all of Nast's out-of-pocket costs with respect to such items, exclusive of salaries. In the event that any such items include printed pages or engravings, Nast shall be reimbursed for the cost of such printed pages or engravings on the basis of the costs allocated to such items under Nast's customary cost accounting system. For the purposes of this paragraph, work in process shall include all finished or partially finished matter.

(b) Print such publication for the account of Butterick until December 31, 1961, (including the February-March 1962 issue), in the same manner in which Nast printed such periodical during the year 1960, and the charge for such printing services shall be made to Butterick at the same rates as Nast customarily charged its Pattern Division during 1960 for the printing of said magazine, plus any additional production costs arising out of an increase in labor and other direct production charges during 1961.

(c) Deliver to Butterick a list or lists of all subscribers to such publication and information as to the terms of the subscription agreements with respect thereto, against Butterick's written assumption of the obligation to perform the unfulfilled portion of said subscription agreements.

(d) Pay to Butterick a sum equal to the net reserve for unfulfilled subscriptions on the books of Nast on the closing date, calculated on the basis used by Nast during the calendar year 1960, less an average "getting expense" per copy of \$.075 for all undelivered copies.

(e) Assign all net advertising revenues for advertising contracted for and published in issues of "Vogue Pattern Book" commencing with any issue which goes on sale subsequent to the closing date.

(f) Provide, during the period from the closing date to December 31, 1961, the same advertising make-up, art, photostat handling, engraving handling and such other services as are desired by Butterick and as are now being provided to said publication, and Butterick will pay Nast at the same rate for such services as would have been charged to said publication had it remained a Nast property.

8. On the closing date, Nast will:

(a) Execute and deliver to Butterick a bill of sale covering all work in process for all Vogue Pattern Counter Catalogs

and supplements upon which any preparatory work has been done and which will be sold subsequent to the closing date, including photographs, drawings, art work, camera work, plate work and printed pages, against reimbursement by Butterick of all of Nast's out-of-pocket costs with respect to such items, exclusive of salaries. In the event that any such items include printed pages, camera work or plate work, Nast shall be reimbursed for the cost of the same on the basis of the costs allocated to such items under Nast's customary cost accounting system. For the purposes of this paragraph, work in process shall include all finished or partially finished matter.

(b) Print such publication for the account of Butterick until December 31, 1961, in the same manner in which Nast printed such periodical during the year 1960, and the payment for such printing services shall be charged to Butterick at the same rates as Nast customarily charged its Pattern Division during 1960 for the printing of said magazine, plus any additional production costs arising out of an increase in labor and other direct production charges during 1961.

(c) Assign any contracts relating to advertising to appear in counter catalogs which go on sale on or after the closing date and pay to Butterick any prepaid advertising payments collected by Nast with respect thereto.

9. On the closing date, Nast will execute and deliver to Butterick a bill of sale covering all work in process for all Vogue Pattern Fashion Folders, upon which any preparatory work has been done and which will be sold subsequent to the closing date, including photographs, drawings, art work, camera work, plate work and printed pages, against reimbursement by Butterick of all of Nast's out-of-pocket costs with respect to such items, exclusive of salaries. In the event that any such items include printed pages, camera work or plate work, Nast shall be reimbursed for the cost thereof on the basis of the costs allocated to such items

under Nast's customary cost accounting system. For the purposes of this paragraph, work in process shall include all finished or partially finished matter.

10. On the closing date Nast will:

(a) Execute and deliver to Butterick a bill of sale for all copies of The New VOGUE SEWING BOOK then in the possession of Nast against payment therefor by Butterick of an amount equal to 54 cents per copy.

(b) Store without charge to Butterick all such copies of said Book until December 31, 1961, and during such period ship, without transportation cost to Nast, said Book in such quantities as directed by Butterick.

11. During the period prior to the closing date, Butterick shall be given the opportunity to examine and copy, during reasonable business hours, all records and correspondence maintained by Nast with respect to the pattern business, including the above mentioned publications, except internal records revealing the amount or distribution of Nast's overhead expenses, and upon the closing date, or as soon thereafter as practicable, Nast will deliver to Butterick any and all such records, excluding financial records, as Butterick indicates it desires.

12. On the closing date, Butterick will:

(a) Offer employment to all personnel then employed by Nast in the pattern statistical, designing, art, construction chart, grading, measuring, final editing, marking (tracing), and customer service departments located at Greenwich, Connecticut, and administrative, designing, creative art, selling, general promotion, direct store promotion, field promotion, education, Vogue Pattern Book editorial, art and advertising departments located in the Graybar Building in New York City, upon terms and conditions of employment substantially

the same as those then offered by Nast to such employees and shall offer an opportunity to such employees to participate in the Butterick employee pension plan, on a basis that would waive the present three-year eligibility requirement under such pension plan, but Butterick shall be under no obligation to grant any past service credit for any period of employment by Nast.

(b) Be obligated to pay separation pay to any such Nast employee who shall become an employee of Butterick after the closing date, if the termination of such employee's employment by Butterick shall occur on a date subsequent to the elapse of the periods set forth in the following categories of personnel, as they are employed by Butterick at the time of such termination:

<u>Department</u>	<u>Period</u>
New York Administrative, Selling, General Promotion, Direct Store Promotion, Field Promotion Educational; Vogue Pattern Book Editorial, Art and Advertising; and Greenwich Pattern Statistical and Customer Service.	From the closing date to December 31, 1961
New York Pattern Creative, Designing and Art; Greenwich Designing, Art, Construction Chart, Grading, Measuring, Final Editing, and Marking (Tracing).	From the closing date to December 31, 1962

Butterick shall be under no obligation to make separation payments to any employee whose employment shall be terminated by Butterick within the period set forth with respect to such employee's department. The amount, terms and conditions under which separation pay shall be paid shall be not less favorable than those in effect at Nast on the closing date.

13. (a) On the closing date, Butterick will pay to Nast a sum equal to all advance payments theretofore made by Nast to French

and International Couturiers with respect to designs that, as of the closing date, have not yet been put on sale in the stores, and during the period subsequent to the closing date, Butterick shall pay to Nast, or to such Couturiers, all royalty payments due with respect to the designs put on sale in the stores subsequent to the closing date.

(b) If either party is or becomes obligated to any of said Couturiers with respect to any guaranteed minimum payment, such additional payment pursuant to said guarantee shall be shared by the parties in the proportion that the sales of the patterns pertaining to such guarantee prior to the closing date bears to the sales subsequent to the closing date.

(c) Within 60 days after the closing date, Nast will furnish Butterick with a statement of all sales of French and International Couturier patterns made by Nast prior to the closing date and of the royalties paid to such couturiers.

14. On the closing date Butterick will:

(a) Deliver to Nast certificates representing 15,000 shares of its common stock, of an agreed value of \$225,000.; and

(b) Assume in writing the obligations set forth in Paragraphs 1.(c) and 7.(c); and

(c) Assume in writing the obligations set forth in Paragraph 1.(f) estimated to aggregate \$375,000.; and

(d) Deliver to Nast a note, in the form described in Paragraph 16, in a principal amount equal to the aggregate of the payments as described in Paragraphs 1.(h) and 13.(a) due from Butterick on the closing date.

(e) Deliver to Nast, in cash, such amount as may be necessary to pay any and all sales taxes applicable to transfers which take place on the closing date.

15. On the closing date, the parties will each designate representatives who will jointly ascertain all items of inventory referred to in Paragraphs 1.(g), 1.(i), 7.(a), 8.(a), 9., and 10.(a) and within 45 days of said closing date, Butterick shall make payment therefor in the manner and on the basis described in said paragraphs and shall pay any sales tax involved in the transfer of any such items.

16. Wherever any obligation on the part of Butterick hereunder is to be paid by promissory note or notes, said note or notes shall be in non-negotiable form and shall provide that interest shall be payable quarterly on the principal amount thereof at a rate of interest which will equal the prime commercial rate of Chase Manhattan Bank for 90-day maturities during each applicable quarter, and said note or notes shall each mature on a date five years after the date of the issuance thereof, and Nast shall have the right to convert the principal of any of said notes or any part thereof into the common stock of Butterick on the basis of one share of such stock for each \$15.00 of said principal, subject to the limitation, however, that such conversion privilege may not require the issuance by Butterick of in excess of an aggregate of 25,000 shares of such common stock; said conversion privilege shall be exercised by Nast by written notice to Butterick not less than 30 days prior to the maturity date of any such note or notes or within 30 days after receipt of notice from Butterick that it desires to make prepayment of any such note or notes; such note or notes may be prepaid by Butterick without penalty, provided that Butterick gives Nast not less than 60 days' written notice of such intention, and that any such prepayment may be effected only on an interest payment date. The note or notes shall also provide that, in the event of a stock split or combination, stock dividend, recapitalization, merger, consolidation, or any other action changing the nature of said shares of Butterick, a corresponding change in the number and kind of shares issuable upon the conversion shall be made. Said note or notes

shall contain a reference therein to certain restrictions imposed upon the sale of any shares issued pursuant to and described in a certain agreement referred to in Paragraph 1.(j) of this agreement, and said notes shall expressly subject any shares received by the holder of any such note as the result of the exercise of the conversion rights therein contained to the same restrictions.

17. On the closing date, Nast will cause its wholly owned subsidiary THE CONDÉ NAST PUBLICATIONS LTD., a British corporation with a principal office in London, England (hereinafter called "Nast Ltd.") to:

(a) Execute and deliver to The Butterick Publishing Company, Ltd., a wholly owned subsidiary of Butterick with its principal place of business at Havant, England (hereinafter called "Butterick Ltd."), if advised by counsel that the same is necessary or legally required, a license and royalty agreement authorizing Butterick Ltd. to use exclusively the name "Vogue" on patterns and certain publications, such license and royalty agreement to be in form similar to Exhibit A attached hereto, or in the event that such separate license shall not be deemed necessary, to consent in writing to the license and royalty agreement marked Exhibit A; but if separate license agreements are required, there shall be no duplication in the payment of royalties.

(b) During the period from the closing date to a date twelve months thereafter, Nast Ltd. will manufacture and/or ship for the account of Butterick Ltd. any and all patterns bearing the trade-mark and name "Vogue" requested by Butterick Ltd., such patterns and any shipping charges to be paid for by Butterick Ltd. to Nast Ltd. at Nast Ltd's cost, exclusive of indirect overhead charges of Nast Ltd. Nast Ltd. shall bill Butterick Ltd. monthly for all patterns shipped to customers or to Butterick Ltd. pursuant to the request of Butterick Ltd. and Butterick Ltd. shall pay therefor within 20 days of the receipt of such statements.

(c) Execute and deliver to Butterick Ltd. written authorization to permit Butterick Ltd. to use the name of Nast Ltd. on bills and statements for billing merchants for patterns and outstanding accounts receivable for a period of twelve months subsequent to the closing date, such bills and statements to contain an appropriate reference thereon that the billing is for the account of Butterick Ltd.

(d) Execute and deliver to Butterick Ltd. an assignment in writing of all accounts receivable owned by Nast Ltd. arising out of the sale of patterns by Nast Ltd. to its customers, the aggregate amount of which shall be certified by Nast Ltd. on the date of closing. During the period commencing from the date of closing to August 31, 1961, Butterick Ltd. shall maintain a separate adjustment account relating to such accounts receivable and the parties shall make adjustment between them with respect to such accounts receivable in the manner and in accordance with the formula described in Paragraph 1(e) except that in lieu of the figure of \$600,000 specified in said paragraph, the parties will use a figure which shall be determined by a representative from each party who shall in good faith attempt to reach agreement within a reasonable time as to the total amount of the possible return of inventory in the hands of merchants that may occur. The figure to be applied shall be the figure so determined by such representatives, or in the event that said representatives cannot agree on such figure, shall be the figure determined by the Butterick representative, except that in no event can said figure exceed \$75,000. If at the end of business on August 31, 1961, the aggregate sum of such account determined in accordance with the above described formula shall be less than the amount designated by said representatives, then Nast Ltd. shall within ten days thereafter pay to Butterick Ltd. in cash a sum equal to such difference; but if the aggregate sum of such account shall exceed the figure so determined by the parties in accordance with the provisions hereinabove set forth, Butterick Ltd.

shall within ten days thereafter pay to Nast Ltd. in cash a sum equal to such excess.

The aggregate amount of such account as of the end of business on August 31, 1961, shall be computed in accordance with the formula set forth in Paragraph 1(e) of this agreement except that for the purposes of such computation, the date referred to therein as July 31, 1961, shall be August 31, 1961.

(e) Execute and deliver to Butterick Ltd. a written assignment of all outstanding contracts between Nast Ltd. and retail merchants relating to the pattern business upon Butterick Ltd.'s written assumption of all of Nast Ltd.'s obligations with respect to the performance of such contracts subsequent to the said closing date.

(f) Execute and deliver to Butterick Ltd. a bill of sale of all merchantable and usable retail storage pattern cabinets and racks then owned by Nast Ltd., to be paid for by Butterick Ltd. at the cost of such equipment to Nast Ltd. Nast Ltd. agrees to store such cabinets and racks for a period of twelve months after the closing date at no cost to Butterick Ltd. and ship such cabinets and racks during such period at Butterick Ltd.'s expense. Butterick Ltd. may elect not to purchase any or all of such cabinets and racks.

18. On a date twelve months after the closing date, Nast will cause Nast Ltd. to:

(a) Execute and deliver to Butterick Ltd. a bill of sale of all inventory of merchantable and usable finished patterns then owned by Nast Ltd. and shall deliver such patterns to Butterick Ltd. During the period subsequent to such date, Butterick Ltd. shall furnish Nast Ltd. with monthly statements advising Nast Ltd. of all sales of patterns that constituted part of such inventory during such period, and with

each such monthly statement shall make payment to Nast Ltd. of a sum equal to the average cost per pattern as determined in accordance with Nast Ltd.'s cost accounting method in use as of December 31, 1960, exclusive of indirect overhead charges of Nast Ltd. Butterick Ltd. shall have the sole right to determine what if any of such patterns are to be sold and in the event notice of an intention not to sell any patterns is sent to Nast Ltd. and to customers by Butterick Ltd., the parties agree that Butterick Ltd.'s accountability for retention or otherwise with respect to any such patterns then in the possession of Butterick Ltd. shall cease.

(b) Deliver to Butterick Ltd. or to its designees such inventory, the method of transportation to be designated and the cost thereof borne by Butterick Ltd.

(c) Execute and deliver to Butterick Ltd. a bill of sale for all its inventory of raw materials and other items used in the manufacture of patterns and any work in process against payment by Butterick Ltd. by promissory note in the manner provided for in Paragraph 16 hereof of Nast Ltd.'s cost thereof. Butterick Ltd. shall have the right to reject any raw material, other items or work in process not merchantable or usable for the purposes for which they were intended. During the twelve months' period following the closing date, Nast Ltd. will not purchase raw materials and other items for use in the manufacture of patterns, except in the ordinary course of business, without the written approval of Butterick Ltd.

19. On the closing date Nast will cause Nast Ltd. to:

(a) Execute and deliver to Butterick Ltd. a bill of sale covering all work in process for issues of "Vogue Pattern Book" upon which any preparatory work has been done for any issue to be put on sale after the closing date, including photographs, drawings, other art work, engravings, and printed pages, against reimbursement by Butterick Ltd. of all of

Nast Ltd.'s out-of-pocket costs with respect to such items, exclusive of salaries. In the event that any such items include printed pages or engravings, Nast Ltd. shall be reimbursed for the cost of such printed pages or engravings on the basis of the costs allocated to such items under Nast Ltd.'s customary cost accounting system. For the purpose of this paragraph, work in process shall include all finished or partially finished matter.

(b) If assignable, to execute and deliver an assignment to Butterick Ltd. of Nast Ltd.'s contract for the printing of such publication against Butterick Ltd.'s assumption of all obligations arising subsequent to such date.

(c) Deliver to Butterick Ltd. a list or lists of all subscribers to such publication and information as to the terms of the subscription agreements with respect thereto, against Butterick Ltd.'s written assumption of the obligation to perform the unfulfilled portion of said subscription agreements.

(d) Pay to Butterick Ltd. a sum equal to the net reserve for unfulfilled subscriptions on the books of Nast Ltd. on the closing date calculated on the basis used by Nast Ltd. during the calendar year 1960, less an average "getting expense" per copy for all undelivered copies, as shown by Nast Ltd.'s records.

(e) Assign all net advertising revenue for advertising contracted for and published in issues of "Vogue Pattern Book" commencing with any issue which goes on sale subsequent to the closing date.

(f) Provide, during the period from the closing date to December 31, 1961, the same advertising make-up, art, photostat handling, engraving handling and such other services as are desired by Butterick and as are now being provided to said publication, and Butterick Ltd. will pay Nast Ltd. at the

same rate for such services as would have been charged to said publication had it remained a Nast Ltd. property.

20. On the closing date, Nast will cause Nast Ltd. to execute and deliver to Butterick Ltd. a bill of sale covering all Vogue Pattern Counter Catalogs and supplements in the possession of Nast Ltd. on such date against payment therefor by Butterick Ltd. at the cost thereof as normally charged by Nast to Nast Ltd.

21. On the closing date, Nast will cause Nast Ltd. to transfer to Butterick Ltd. all Vogue Pattern Fashion Folders then in the possession of Nast Ltd. against payment therefor by Butterick Ltd. of the cost of such fashion folders paid by Nast Ltd. to Nast.

22. During the period prior to the closing date, Butterick Ltd. will be given the opportunity to examine and copy, during reasonable business hours, all records and correspondence maintained by Nast Ltd. with respect to the pattern business, including the above mentioned publications, except internal records revealing the amount or distribution of Nast Ltd.'s departmental overhead expenses, and on the closing date, or as soon thereafter as practicable, Nast Ltd. will deliver to Butterick Ltd. any and all such records, excluding financial records, as Butterick Ltd. indicates it desires.

23. On the closing date, Butterick Ltd. will:

(a) Offer employment to all personnel then employed by Nast Ltd. in the pattern sales, statistical, accounting, general administrative, promotion, field staff, customer service, educational, Vogue Pattern Book editorial, art and advertising departments, upon terms and conditions of employment substantially the same as those offered by Nast Ltd.

(b) Be obligated to pay separation pay to any Nast Ltd. employee who shall become an employee of Butterick Ltd. after the closing date, if the termination by Butterick Ltd. of

such employee's employment shall occur subsequent to the elapse of twelve months from the closing date. Butterick Ltd. shall be under no obligation to make separation payments with respect to any such employee whose employment shall have been terminated by Butterick Ltd. within said twelve months. The amount, terms and conditions under which separation pay shall be paid shall be not less favorable than those in effect at Nast Ltd. on the closing date.

(c) Assume in writing the obligations set forth in Paragraphs 17.(e) and 19.(c).

24. On the closing date, the parties will each designate representatives who will jointly determine all items referred to in Paragraphs 17.(f), 19.(a), 20. and 21. and within 45 days of said closing date Butterick Ltd. shall make payment therefor on the basis described in said paragraphs by executing and delivering to Nast Ltd. notes in the principal amount of the aggregate of all sums due from Butterick Ltd. on the closing date pursuant to said Paragraphs, such notes to be dated and to bear interest from the closing date and to be in substantially the same form referred to in Paragraph 16, except that such note or notes shall not contain any right to convert the same into stock of Butterick or Butterick Ltd.

25. On the closing date Nast will cause its wholly owned subsidiary VOGUE (AUSTRALIA) PTY. LTD., an Australian corporation with its principal office in Melbourne, Australia, (hereinafter called "Nast Pty.") to:

(a) Execute and deliver to THE BUTTERICK PUBLISHING Co., PTY., LTD., a wholly owned subsidiary of Butterick, with its principal place of business at Sydney, Australia, or BUTTERICK N. Z. LTD. NEW ZEALAND, a wholly owned subsidiary of Butterick with its principal place of business at Auckland, New Zealand (both of which are hereinafter called "Butterick

Pty.") if advised by counsel that the same is necessary or legally required, a license and royalty agreement authorizing Butterick Pty. to use exclusively the name "Vogue" on patterns and certain publications, such license and royalty agreement to be in form similar to Exhibit A attached hereto, or in the event that such separate license shall not be deemed necessary, to consent in writing to the license and royalty agreement marked Exhibit A, but if separate license agreements are required, there shall be no duplication in the payment of royalties.

(b) Execute and deliver to Butterick Pty. a deed for the Freehold Land and Buildings now occupied by Nast Pty. at 184 Noone Street, Clifton Hill N. S. Melbourne, Australia, against payment therefor by Butterick Pty. of the sum of £62,749 Australian currency.

(c) Execute and deliver to Butterick Pty. written authorization to permit Butterick Pty. to use the name of Nast Pty. on bills and statements for billing merchants for patterns and outstanding accounts receivable for a period of twelve months subsequent to the closing date, such bills and statements to contain an appropriate reference thereon that the billing is for the account of Butterick Pty.

(d) Execute and deliver to Butterick Pty. an assignment in writing of all accounts receivable owned by Nast Pty. arising out of the sale of patterns by Nast Pty. to its customers, the aggregate amount of which shall be certified by Nast Pty. on the closing date. During the period from the closing date to July 31, 1961, Butterick Pty. shall maintain a separate adjustment account relating to such accounts receivable and the parties shall make adjustment between them with respect to such accounts receivable in the manner and in accordance with the formula described in Paragraph 1(e) except that in lieu of the figure of \$600,000 specified in said paragraph, the parties will use a figure which shall be determined

by a representative from each party who shall in good faith attempt to reach agreement within a reasonable time as to the total amount of the possible return of inventory in the hands of merchants that may occur. The figure to be applied shall be the figure so determined by such representatives, or in the event that said representatives cannot agree on such figure, shall be the figure determined by the Butterick Pty. representative, except that in no event can said figure exceed \$25,000. If at the end of business on July 31, 1961, the aggregate sum of such account determined in accordance with the above described formula shall be less than the amount designated by said representatives, then Nast Pty. shall within ten days thereafter pay to Butterick Pty. in cash a sum equal to such difference; but if the aggregate sum of such account shall exceed the figure so determined by the parties in accordance with the provisions hereinabove set forth, Butterick Pty. shall within ten days thereafter pay to Nast Pty. in cash a sum equal to such excess.

The aggregate amount of such account as of the end of business on July 31, 1961, shall be computed in accordance with the formula set forth in Paragraph 1(e) of this agreement.

(e) Execute and deliver to Butterick Pty. a written assignment of all outstanding contracts between Nast Pty. and retail merchants relating to the pattern business upon Butterick Pty.'s written assumption of all of Nast Pty.'s obligations with respect to the performance of such contracts subsequent to the said closing date.

(f) Execute and deliver to Butterick Pty. a bill of sale of all merchantable and usable retail storage pattern cabinets and racks owned by Nast Pty. on the closing date, at the cost of such equipment to Nast Pty. Butterick Pty. may elect not to purchase any or all such cabinets and racks.

26. On the closing date, Nast will cause Nast Pty. to;

(a) Execute and deliver to Butterick Pty. a bill of sale of all inventory of merchantable and usable finished patterns then owned by Nast Pty. and shall deliver such patterns to Butterick Pty. During the period subsequent to such date, Butterick Pty. shall furnish Nast Pty. with monthly statements advising Nast Pty. of all sales during such period of patterns that constituted part of such inventory, and with each such monthly statement shall make payment to Nast Pty. of a sum equal to the average cost per pattern as determined in accordance with Nast Pty.'s cost accounting method in use as of December 31, 1960, exclusive of indirect overhead charges of Nast Pty. Butterick Pty. shall have the sole right to determine what, if any, of such patterns are to be sold and, in the event notice of an intention not to sell any pattern is sent to Nast Pty. and to customers by Butterick Pty., the parties agree that Butterick Pty.'s accountability for retention or otherwise with respect to any such patterns then in the possession of Butterick Pty. shall cease.

(b) Execute and deliver to Butterick Pty. a bill of sale for all its inventory of raw material and other items used in the manufacture of patterns and any work in process against payment by Butterick Pty. of Nast Pty.'s cost thereof. Butterick Pty. shall have the right to reject any raw material, other items or work in process that are not merchantable or usable for the purposes for which they were intended.

27. During the period prior to the closing date, Butterick Pty. will be given the opportunity to examine and copy during reasonable business hours all records and correspondence maintained by Nast Pty. with respect to the pattern business, including the above mentioned publications, except internal records revealing the amount or distribution of Nast Pty.'s departmental overhead expenses, and on the closing date, or as soon thereafter as practicable, Nast Pty. will deliver to Butterick Pty. any and all

such records, excluding financial records, as Butterick Pty. indicates it desires.

28. On the closing date, Butterick Pty. will:

(a) Offer employment to all personnel of Nast Pty. engaged in the pattern business, except the General Manager, upon terms and conditions of employment substantially the same as those offered by Nast Pty.

(b) Be obligated to pay separation pay to any Nast Pty. employee who shall become an employee of Butterick Pty. after the closing date if the termination by Butterick Pty. of such employee's employment shall occur subsequent to the elapse of twelve months from the closing date. Butterick Pty. shall be under no obligation to make separation payments with respect to any such employee whose employment shall have been terminated by Butterick within said twelve months. The amount, terms and conditions under which separation pay shall be paid shall be not less favorable than those in effect at Nast Pty. on the closing date.

(c) Assume in writing the obligation set forth in Paragraph 25.(e).

29. On the closing date the parties will each designate representatives who will jointly determine all items referred to in Paragraphs 25.(b), 25.(f) and 26.(b), and within 45 days of said closing date Butterick Pty. shall make payment therefor on the basis described in said paragraphs by executing and delivering to Nast Pty. notes in the principal amount of the aggregate of all sums due from Butterick Pty. on the closing date pursuant to said Paragraphs, such notes to be dated and to bear interest from the closing date and to be in substantially the same form referred to in Paragraph 16, except that such note or notes shall not contain any right to convert the same into stock of Butterick or Butterick Pty.

30. The closing of the transactions referred to herein, except for those relating to events to take place in England and Australia, shall take place at the offices of Messrs. DeWitt, Nast & Diskin, Room 808, 420 Lexington Avenue, New York, N. Y., on the dates hereafter specified and at such time, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon as the parties shall mutually agree upon. The transactions relating to England and Australia shall take place on the same dates at the place and time designated by Nast by notice in writing given not less than seven days prior to each closing date. For the purposes of this agreement: (a) The term "closing date" shall mean April 1, 1961; (b) the term "shipment closing date" shall mean December 31, 1961, unless Butterick shall specify a date prior thereto by notice in writing to Nast given not less than 30 days prior to the date so specified; and (c) the term "final closing date" shall mean June 30, 1962, unless Butterick shall specify a date prior thereto by notice in writing to Nast given not less than 30 days prior to the date so specified.

31. Butterick hereby represents and warrants to and covenants and agrees with Nast that as of the date hereof and as of the closing date:

(a) Butterick, a copy of whose Certificate of Incorporation with all amendments, certified by the Secretary of State of New York, and a copy of whose By-Laws with all amendments to date, certified by its Secretary, have been furnished to Nast, is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, and is duly qualified and in good standing in all jurisdictions wherein the character of the property owned or the nature of the business transacted by it requires such qualification.

(b) The following constitutes a statement of all classes of stock of Butterick, all of which have been duly and validly

authorized and which are duly and validly issued and outstanding:

<u>Title of Class</u>	<u>Shares Authorized</u>	<u>Shares Outstanding</u>
Common Stock—\$1.00 Par Value ..	150,000	82,006
Preferred Stock—Non-Voting 5% Non-Cumulative Dividend Rights \$50 Par Value	40,000	32,349

Butterick does not have outstanding any warrants, options or other rights for the purchase or other acquisition of any of its shares of common stock except that:

(i) 8,000 shares of its common stock are reserved for issuance upon the exercise of options heretofore or hereafter granted to employees of Butterick pursuant to a "Restricted Stock Option Plan for Key Officers and Employees" approved by its stockholders on August 4, 1960, and (ii) not more than 275 shares of common stock are reserved for issuance upon the exercise of outstanding script rights.

(c) The 15,000 shares of stock to be delivered by Butterick to Nast under Paragraph 14 hereof shall constitute not less than 13.6% of issued and outstanding common stock on the date of such issue; said stock shall be free and clear of all liens and encumbrances, fully paid and non-assessable, free and clear of preemptive rights of holders of any class of Butterick stock, exempt under the provisions of Section 39 of the Stock Corporation Law of New York, and all requisite and applicable Federal and State taxes shall have been paid relating thereto.

(d) Any stock issued pursuant to the conversion privileges contained in any note specified in Paragraph 16 shall at the time of issuance be free and clear of all liens and encumbrances, fully paid and non-assessable, free and clear of preemptive rights of holders of any class of Butterick stock, exempt under the provisions of Section 39 of the Stock Corpora-

tion Law of New York, and all requisite and applicable Federal and State taxes shall have been paid relating thereto.

(e) Butterick has heretofore submitted to Nast copies (i) of the audited Consolidated Balance Sheets of Butterick and its Subsidiaries as at December 31, 1959, and the related audited consolidated Statements of Income and Surplus of Butterick for the calendar year ended December 31, 1959, certified by Messrs. Arthur Andersen & Co., Certified Public Accountants, and (ii) unaudited unconsolidated Balance Sheet and Statements of Income and Surplus of Butterick for the eleven months' period ended November 30, 1960. Such financial statements have been prepared in accordance with generally accepted accounting principles and are correct and complete and fairly present the financial position of Butterick at the dates thereof and the results of its operations for the periods covered thereby. Since December 31, 1959, there has been no change in the condition (financial or otherwise), assets, liabilities or business of Butterick and its said subsidiaries as reflected in the aforesaid consolidated balance sheet as of December 31, 1959, other than changes in the ordinary course of business, none of which have been materially adverse, and other than may be disclosed in the above mentioned unaudited, unconsolidated financial statements of Butterick.

(f) Butterick Ltd., The Butterick Publishing Co., Pty., Ltd. and Butterick N. Z. Ltd., New Zealand, are wholly owned subsidiary corporations of Butterick (exclusive of directors' qualifying shares), duly organized, validly existing and in good standing, respectively, under the laws of Great Britain, Australia and New Zealand.

(g) There are no actions, suits or proceedings pending, or to Butterick's knowledge threatened, against or affecting Butterick or its properties or its said subsidiaries in any court or before any governmental body (except those of the character normally incident to the business conducted by But-

terick and said subsidiaries which, if adversely determined, would not materially impair Butterick's right or ability or the right or ability of said subsidiaries to carry on its or their business substantially as now conducted); Butterick and said subsidiaries are not in default with respect to any order of any court or governmental body, department or instrumentality, domestic or foreign.

(h) The Federal income and State franchise tax returns of Butterick have been audited respectively by the Internal Revenue Service to and including the calendar year 1958 and by the States of New York and Pennsylvania to and including the year 1956. Butterick and its said subsidiaries have paid all taxes as shown on all Federal, State, municipal and foreign tax returns which it or they have filed, and have paid all assessments received by it or them to the extent that the same have become due.

32. Nast hereby represents and warrants to and covenants and agrees with Butterick that:

(a) At the time of the execution and delivery of each of the bills of sale of the personal property described in this agreement, said property shall be owned by Nast or its above mentioned subsidiaries, free and clear of all liens and encumbrances and, upon delivery of said bills of sale, the same shall convey title thereto to Butterick or its above mentioned subsidiaries free and clear of all liens and encumbrances and, upon said delivery, Butterick or its said subsidiaries shall be entitled to remove said property.

(b) At the time of the sale, pursuant to this agreement, of all machinery and equipment, said machinery and equipment shall be in good working order and in substantially the same condition as of the date of this agreement, normal wear and tear excepted.

(c) At the time of the sale of the real property described in Paragraph 25(b) of this agreement, said property shall be owned by Nast Pty. free and clear of all liens and encumbrances, except liens for current taxes, which will be apportioned between the parties, and upon delivery of the deed described in this agreement, said deed shall vest in Butterick Pty. marketable title to said property in fee simple, free of all liens and encumbrances.

(d) Immediately prior to the closing date, none of the employees of Nast or of its subsidiaries to whom Butterick or its subsidiaries are to make offers of employment pursuant to this agreement, are employed by Nast or its subsidiaries under any agreement or agreements that are not cancellable by Nast or said subsidiaries without penalty upon two weeks notice or less to said employees, except that Nast has a written employment agreement with its chief pattern designer, a copy of which contract has been furnished to Butterick.

(e) Nast is acquiring and will acquire the Butterick stock and said promissory notes, together with any stock that it may acquire pursuant to the conversion provisions contained in said notes, for the purpose of investment and not with a view to or for sale in connection with any distribution thereof nor with any present intention of distributing, selling or disposing of the said stock or said notes.

(f) The representations and warranties described in Exhibit A to this agreement are true and correct as of the date of this agreement.

(g) There are no actions, suits or proceedings pending, or to Nast's knowledge threatened, against or affecting Nast's right or the rights of its said subsidiaries to use the trademark and name "Vogue" in conjunction with the pattern business or any of the periodicals referred to in this agreement, nor are there any actions, suits or proceedings pending or to

Nast's knowledge threatened against or affecting the conduct by Nast or its said subsidiaries of the pattern business (except actions, suits or proceeding of the character normally incident to such kind of business which, if adversely determined, would not materially impair Nast's right or ability or the right or ability of said subsidiaries to carry on such pattern business substantially as now conducted) and neither Nast nor any of its subsidiaries is in default with respect to any order of any court or governmental body, department, or instrumentality, domestic or foreign.

(h) The Federal income tax returns of Nast have been audited by the Internal Revenue Service to and including 1958. Nast and said wholly owned subsidiaries have paid all taxes upon all Federal, State, Municipal and foreign tax returns which it or they have filed, and have paid all assessments received by it or them to the extent that the same have become due.

(i) The data heretofore furnished by Nast, consisting of three pages, the first entitled "Vogue Pattern Sales (Net)" for eleven months in each of the years 1959 and 1960, the second a statement of the re-order unit sales and revenues of Australian operations for the years 1954 to and including 1959, and the third a statement of the re-order unit sales and revenues of British operations for the years 1955 to and including 1959, which pages have been initialed by the parties hereto, are true and correct except for variations in any one or more of the figures comprising such data to the extent of 5% of the amount of each of such figures.

(j) All contracts with merchants referred to in Paragraph 1(f) are in substantially the same form as the four forms of contract previously delivered by Nast to Butterick and which have been initialed by the parties hereto, and in no event contain more burdensome obligations on the part of Nast than those set forth in said forms of contract.

(k) All contracts with merchants referred to in Paragraph 17(e) are in substantially the same form as the four forms of contract previously delivered by Nast Ltd. to Butterick and which have been initialed by the parties hereto, and in no event contain more burdensome obligations on the part of Nast Ltd. than those set forth in said forms of contract.

(l) All contracts with merchants referred to in Paragraph 25(e) are in substantially the same form as the three forms of contract previously delivered by Nast Pty. to Butterick and which have been initialed by the parties hereto, and in no event contain more burdensome obligations on the part of Nast Pty. than those set forth in said forms of contract.

33. The above mentioned respective representations and warranties shall survive the closing and transfers which will be effected pursuant to this agreement, notwithstanding any independent investigation made by either party with respect to the matters to which such representations and warranties relate.

34. In respect to all transactions which shall take place within the United States, this contract shall be construed under the laws of the State of New York. With respect to all transactions taking place in England, Australia and elsewhere under the provisions of this contract, this contract shall be construed under the laws of the State of New York to the extent that such construction is permissible under the laws of the foreign country in which such transaction takes place, and if under the laws of such country and its rules of comity, application of the New York law is not permitted, then this contract, to the extent appropriate, shall be construed under the laws of such country.

35. All notices required to be given hereunder shall be addressed by registered mail (unless a different address has been furnished by registered mail to the other party) as follows:

If to Nast by Butterick:

The Condé Nast Publications Inc.
420 Lexington Avenue
New York 17, New York
Attention of the President

and a copy thereof to:

Messrs. DeWitt, Nast & Diskin
420 Lexington Avenue
New York 17, New York

If to Butterick by Nast:

The Butterick Company, Inc.
Butterick Building
161 Sixth Avenue
New York 13, New York
Attention of the President

and a copy thereof to:

Messrs. Ide & Haigney
51 East 42nd Street
New York 17, New York

36. Any controversy, dispute, disagreement or claim arising out of or in respect to the interpretation, performance or application of any of the representations, warranties or other provisions of this Agreement shall be submitted to arbitration; the provisions of this Paragraph, however, shall not require the submission to arbitration of any controversy, dispute, disagreement or claim arising out of or in respect to the interpretation, performance or application of the representations, warranties or other provisions of the license agreement (Exhibit A hereto), subsequent to the execution and delivery of that document. If such action is necessary, each party shall designate a representative to act on its behalf to attempt to reach agreement as to any such controversy, dispute, disagreement, claim or interpretation; and if an

agreement is reached by them, it shall be final and binding upon the parties hereto. If such representatives are unable to reach such an agreement, said representatives shall select an arbitrator whose decision, after due consideration of the controversy, dispute, disagreement, claim or interpretation, shall be final and binding upon both parties. If said representatives are unable or fail to designate an arbitrator, then the same shall be designated by the American Arbitration Association in accordance with the rules of the American Arbitration Association then obtaining and such controversy, dispute, disagreement, claim or interpretation shall be determined by said arbitrator in accordance with said rules. To the extent practicable, the rules of the American Arbitration Association for the solution of commercial problems shall be followed by such arbitrator. The relief, if any, granted by such arbitrator, for any breach of the representations or warranties set forth in Paragraph 32(i), may not include the rescission of this agreement. The decision of the arbitrator in any such arbitration shall be final and binding and judgment upon the award rendered in such arbitration may be entered in the highest court of the forum of the arbitration proceeding, State or Federal, having jurisdiction. Any such arbitration shall be considered to be statutory in nature, and the enforcement, confirmation, modification or vacation of any award made or granted by the arbitrator shall be governed by the provisions of Article 84 of the Civil Practice Act of the State of New York, to the extent that such statute shall have local or extraterritorial application.

37. On and after the closing date, Nast shall indemnify, defend and save Butterick and its said subsidiaries harmless of and from any and all claims, including tax claims, that may be asserted against Butterick or said subsidiaries with respect to any obligation arising as a result of the operations conducted by Nast or its said subsidiaries of its or their business prior to the closing date.

38. The following are conditions to the closing:

(a) Butterick shall have received photostatic or photographic copies of all domestic and foreign trade-mark registrations which have theretofore been filed by Nast or its said subsidiaries with respect to the name "Vogue" as applied to the paper dress pattern business, the Vogue Pattern Book and the other publications referred to in this agreement and a statement certified by Nast as to the date or dates, if any, when said registrations expire.

(b) Butterick shall have received from Messrs. DeWitt, Nast & Diskin an opinion in scope and substance satisfactory to Butterick (i) as to Nast's due incorporation, existence and good standing and the due incorporation, existence and good standing of its said subsidiaries, and power to enter into this agreement and the other agreements specified therein; (ii) as to Nast's ownership or the ownership of its said subsidiaries of all the properties to be transferred to Butterick or its subsidiaries hereunder, free and clear of all liens and encumbrances; (iii) as to the authorization, execution and delivery by Nast of this agreement and by Nast or its subsidiaries of the agreements and transactions contemplated hereunder and the legality, validity and enforceability of said agreements in accordance with their terms; and (iv) as to the validity and exclusive ownership by Nast or its said subsidiaries of the trade-mark "Vogue" in respect to its use in the dress pattern business and the publications referred to in this agreement, in the countries of the United States, Canada, England and Australia, and the effect of any litigation that may have occurred with respect to such use in such countries prior to the closing date. In respect to any part of said opinion which relates to matters arising other than under the Federal law of the United States or the laws of the State of New York, counsel for Nast shall have the right to obtain and rely upon the opinion of legal correspondents in England, in Australia,

in other states of the United States and in other countries throughout the world if they deem it necessary to do so.

(c) Butterick shall have received a certified copy of the resolutions of the Board of Directors of Nast approving or ratifying the execution of this agreement.

(d) Butterick shall have received the written consent of the landlords to the sublease or assignment referred to in Paragraph 1(c) of this agreement.

(e) Nast shall have received from Messrs. Ide & Haigney an opinion in scope and substance satisfactory to Nast (i) as to Butterick's due incorporation, existence and good standing and the due incorporation, existence and good standing of its said subsidiaries, and power to enter into this agreement and the other agreements specified therein; (ii) as to the authorization, execution and delivery by Butterick of this agreement and by Butterick or its subsidiaries of the agreements and transactions contemplated hereunder and the legality, validity and enforceability of said agreements in accordance with their terms, including the validity and enforceability of the note or notes to be given hereunder and the provisions therein concerning the convertibility of the principal thereof into shares of Butterick's common stock; (iii) that the common stock of Butterick to be issued to Nast under Paragraph 14 of this Agreement, or pursuant to the conversion privileges contained in any note specified in Paragraph 16 of this agreement has been duly authorized, may be lawfully issued and shall be free and clear of all liens and encumbrances, fully paid and non-assessable, free and clear of preemptive rights of holders of any class of Butterick stock and exempt under the provisions of Section 39 of the Stock Corporation Law of New York. In respect to any part of said opinion which relates to matters arising other than under the Federal law of the United States or the laws of the State of New York, counsel for Butterick shall have the right to obtain and rely upon the opinion of legal correspondents in England, in Australia, in other states

of the United States and in other countries throughout the world if they deem it necessary to do so.

(f) Nast shall have received a certified copy of the resolutions of the Board of Directors of Butterick approving or ratifying the execution of this agreement.

(g) Nast shall have received an agreement duly executed by Leonard Tingle and others concerning, among other things, certain restrictions upon the disposal of common stock of Butterick owned by them, a copy of which agreement has been initialed by the parties hereto for identification.

39. All bills of sale, assignments, deeds, assumptions of obligation, opinions, certifications and other written documents to be delivered pursuant to this agreement by any party hereto or any of its said subsidiaries to the other party or its said subsidiaries shall be in form satisfactory to counsel for the party to whom said documents are to be delivered. The parties agree to execute and deliver such other documents as shall be reasonably required to implement and carry out the provisions of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers and their seals to be hereunto affixed, the day and year first above written.

THE CONDÉ NAST PUBLICATIONS INC.

By I. S. V.-PATCÉVITCH
President

ATTEST:

M. E. CAMPBELL
Secretary

[CORPORATE SEAL]

THE BUTTERICK COMPANY, INC.

By LEONARD TINGLE
President

ATTEST:

JOHN J. STROBEL
Secretary

[CORPORATE SEAL]

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this 20th day of January, 1961, before me came I. S. V.-PATCÉVITCH to me known, who, being by me duly sworn, did depose and say that he resides at 157 East 70th Street in the City, County and State of New York; that he is the President of The Condé Nast Publications Inc., the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

s/ MURIEL W. HOBSON

Muriel W. Hobson
Notary Public, State of New York
No. 31-1812480
Qualified in New York County
Commission Expires March 30, 1961

[NOTARIAL SEAL]

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this 20th day of January, 1961, before me came LEONARD TINGLE, to me known, who, being by me duly sworn, did depose and say that he resides at 168 Whitehall Boulevard, Garden City, Nassau County, State of New York; that he is the President of The Butterick Company, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

s/ MURIEL W. HOBSON

Muriel W. Hobson
Notary Public, State of New York
No. 31-1812480
Qualified in New York County
Commission Expires March 30, 1961

[NOTARIAL SEAL]

EXHIBIT A

LICENSE AGREEMENT

AGREEMENT made this day of , 1961, by and between THE CONDÉ NAST PUBLICATIONS INC., a New York corporation, having a principal office at No. 420 Lexington Avenue, New York, New York (hereinafter called "Nast"), and THE BUTTERICK COMPANY, INC., a New York corporation, having a principal office at No. 161 Sixth Avenue, New York, New York (hereinafter called "Butterick"),

WITNESSETH :

WHEREAS, Nast hereby represents and warrants to Butterick that:

(a) Nast has heretofore adopted and has for many years used the word "Vogue" continuously as a trade-mark and trade-name (hereinafter referred to as the trade-mark or trade-name) in conjunction with the sale in the United States and Canada and other countries of the world of paper dress patterns designed, manufactured and sold by Nast, and in conjunction with the sale of pattern books, counter catalogs, sewing books, fashion folders and other promotional materials (all such items being hereinafter called "pattern promotional materials"), relating to the sale of paper dress patterns; and has heretofore authorized its wholly owned subsidiaries The Condé Nast Publications Ltd., a British corporation, with a principal office in London, England (hereinafter called "Nast Ltd."), to use said trade-name in England and various other countries of the world; and its wholly owned subsidiary VOGUE (AUSTRALIA) PTY., LTD., an Australian corporation, with its principal office in Melbourne, Australia (hereinafter called "Nast Pty."), to use said trade-name in Australia and various other countries of the world; and said subsidiaries have so used said trade-name under such authorization for a number of years past in conjunction with the design, manufacture and sale of patterns and pattern promotional material; and

(b) Nast and said subsidiaries are collectively the sole owners of the right to use said trade-name in conjunction with the design, manufacture and sale of such patterns and promotional material in the United States, Canada, England and Australia and certain other countries of the world; and

(c) Said trade-name has been registered as a trade-mark for use in conjunction with the design, manufacture and sale of such patterns and pattern promotional material by Nast or one or more of its subsidiaries in the countries set forth in the attached schedule,* and said registrations are presently owned by Nast and/or its said subsidiaries and are in full force and effect; and

(d) Neither Nast nor said subsidiaries have heretofore granted any rights to any other person, firm or corporation to use said trade-name in conjunction with the design, manufacture or sale of such patterns or pattern promotional material, either by assignment or license. This representation and warranty does not apply to licenses granted by Nast to its said subsidiaries; and

(e) Nast has no knowledge of the use of such trade-name by any other person, firm or corporation in connection with the design, manufacture or sale of such patterns or pattern promotional material in any country of the world; and

(f) The Corporations who have executed the licenses and consents at the foot of this agreement constitute all of the subsidiaries of Nast who have any right to use said trade-name in conjunction with the sale of such patterns or pattern promotional materials and said licenses and consents have been duly and validly executed by said Corporations and are binding upon each of them and enforceable by Butterick in accordance with the terms of said licenses and consents; and

WHEREAS, Butterick desires to procure the sole and exclusive license to use said trade-name "Vogue" in conjunction with the

*This schedule is omitted from this form and will be supplied to Butterick on or before the execution of this document.

design, manufacture and sale of such patterns and pattern promotional material, but for no other purpose, upon the terms hereinafter set forth, and Nast and its said subsidiaries are willing to grant such license for such use,

Now, THEREFORE, in consideration of the mutual covenants of the parties hereinafter set forth, Nast hereby grants to Butterick the sole and exclusive right and license to use the trade-mark "Vogue" in the United States, Canada, England and Australia, and, to the extent that Nast or its subsidiaries may lawfully do so, everywhere in the world, on patterns designed, manufactured and sold by Butterick and on pattern promotional material, subject, however, to the following terms, conditions and limitations:

1. Butterick shall use said trade-name only on patterns and pattern promotional material which are dignified and of high quality.

(a) Where Butterick shall use the name "Vogue" only, such patterns and pattern promotional material shall be of the same high standards and quality of the patterns and promotional material heretofore designed, manufactured and sold by Nast and its subsidiaries, Butterick being fully acquainted with such standards.

(b) Where Butterick shall use the said name "Vogue" in association with the name "Butterick" or other name or names as a composite mark, then such patterns and pattern promotional material shall be at least equal to the standards and quality as those heretofore designed, manufactured and sold by Butterick and its subsidiaries.

2. Upon request, Butterick shall permit Nast, or its duly authorized representatives to examine, during normal business hours, any and all patterns and promotional materials designed, manufactured and sold by Butterick bearing said trade-name, to ascertain that such patterns and promotional material conform in all respects to the above standards and quality.

3. Butterick agrees that it will not engage in or authorize any undignified methods in advertising, publicizing, marketing,

promoting or distributing the patterns and pattern promotional material in connection with its use of the licensed trade-name.

4. While this license is in effect, Butterick shall notify Nast of the identity of any person, firm or corporation, (other than those operating lawfully under this license) using said trade-name in conjunction with the design, manufacture or sale of dress patterns or dress pattern promotional material in any country of the world (such use being hereinafter called "infringement"), and, in the event such infringement occurs in the United States, Canada, England, Australia and any other country in which Nast has registered the trade-name in conjunction with the design, manufacture and sale of such patterns or pattern promotional material, Nast shall promptly take appropriate action, at its own cost and expense, to cause such infringement to cease, and in the event that Nast fails diligently to institute and prosecute an appropriate action or proceeding, Butterick is hereby authorized to institute and prosecute such action or proceeding against such infringer, in Nast's name or in the name of any Nast subsidiary, and Nast shall reimburse Butterick for necessary costs or reasonable legal expenses incurred in such action or proceeding.

5. While this license is in effect:

(a) Nast shall provide the following minimum editorial space to feature any patterns designed, manufactured and sold by Butterick under this license, upon the understanding that the selection of the patterns to be so featured shall be wholly within the discretion of the editor or editors of the magazines listed below:

	<u>Magazine</u>	<u>Minimum Pages Per Calendar Year</u>
<i>Published By Nast</i>	Vogue	20
	Glamour	8
	Mademoiselle	8
<i>Published By Nast Ltd.</i>	Vogue	12

(b) Such editorial space shall be furnished free of any cost to Butterick, except that Butterick shall pay the cost of any dress-making involved in costumes that are the subject of such editorials; and in the event that Butterick desires to have additional editorial pages of similar content published in the above mentioned magazines and Nast is willing to publish such additional editorial pages, Nast agrees to make the same available at Nast or Nast Ltd.'s actual cost for the production of said additional pages or portion thereof.

6. While this license is in effect, and so long as Nast or Nast Ltd. shall publish any of the magazines described in Paragraph 5 of this license, the editorial staff of said magazines shall, without cost to Butterick, cooperate with Butterick to advise and assist Butterick with respect to fashion trends and current fashion information that may be useful or necessary to Butterick in the design, manufacture and sale of patterns and in the preparation and publication of said promotional material, such advice and assistance to be rendered at the offices then maintained by the editorial staffs of said publications and during normal business hours.

7. Butterick shall pay a royalty for the use of such trade-name under this license in the manner, and on the basis, hereinafter described:

(a) A royalty equal to one (1%) percent of all sales billed by Butterick to customers on account of the sale of all patterns made by Butterick on and after April 1, 1963 (whether said patterns are sold in conjunction with the use of said trade-name or otherwise), less any payments or credits made by Butterick to its customers after such date with respect to patterns returned actually or constructively for credit to Butterick. The royalty provided for in this subparagraph shall not be payable upon any transportation costs, sales taxes, duties or the cost of any special packing or any other charges separately made by Butterick to its

customers, nor shall Butterick be entitled to credit for uncollectible accounts.

(b) Such royalties shall be paid semi-annually within ninety (90) days of the close of each semi-annual calendar period, except that any royalties due with respect to the year 1963, shall be paid on or before March 31, 1964, and all payments to Nast shall be accompanied by a statement certified by an authorized officer of Butterick, setting forth the total amount of billings (itemized by countries) made by Butterick with respect to said sales during said period, and any payments or credits made to customers during such period.

(c) In the event any payments to be received by Butterick, pursuant to any such sales, shall be restricted under the laws of any country from export or use outside of said country, Butterick may make payment of royalties under this license with respect to such sales to Nast's designee in said country.

(d) Butterick shall be under no obligation to pay royalty with respect to any promotional materials distributed or sold by it pursuant to this license, or with respect to any patterns distributed without charge.

8. Nast's obligation to provide editorial space in any magazine referred to in Paragraph 5 of this license shall terminate with respect to such magazine in the event that Nast or Nast Ltd. discontinues the publication of such magazine. Nast and Nast Ltd. shall not be deemed to have ceased publication of any such magazine if said magazine continues to be published by any corporation owned or controlled by Nast or Nast Ltd.

9. As long as this license is in effect, Nast shall take any and all action necessary to register, renew, re-register or use its best efforts otherwise to maintain in full force and effect, the trade-mark registrations (listed on the attached schedule), unless such action shall be prohibited by or impossible under the laws of any listed country, at Nast's sole cost and expense. Nast shall

also register, renew and re-register said trade-mark while this license is in effect in such other countries of the world as Butterick shall request, and the cost, including any necessary legal expense of said registration, renewal and re-registration shall be borne equally by the parties hereto, and Butterick shall make payment of its share of said cost within thirty (30) days of the receipt by Butterick from Nast of a statement itemizing such cost.

10. This license, and the obligations of the respective parties hereunder, shall remain in full force and effect unless and until said license shall be terminated in the manner and for the reasons hereinafter specified. Said license may be terminated by Nast in the following events:

(a) In the event that Butterick shall fail to pay the royalties due hereunder, provided such failure shall have continued for a period of thirty (30) days after receipt by Butterick of written notice of any such default; in the event Butterick shall dispute the amount of any royalty or royalties claimed by Nast hereunder, Butterick may make payment, under protest, of the amount demanded by Nast and institute an action or proceeding to recover any excess payment so made, and such payment and the institution of such action or proceeding shall not prejudice Butterick's rights under this license or its right to reimbursement;

(b) In the event that Butterick shall be adjudicated a bankrupt, or a receiver shall have been appointed of its assets, and said adjudication or appointment has not been set aside within ninety (90) days of said adjudication or appointment;

(c) In the event that Butterick shall cease the conduct of the business of selling dress patterns, unless coincidentally with the cessation of such business this license shall be transferred to a person, firm or corporation with the consent of Nast, as hereinafter provided;

(d) In the event that the majority of the then issued and outstanding stock of Butterick having voting rights shall become

owned by a person, firm or corporation engaged in the publication of a magazine devoted primarily to women's and girls' fashions, or in the event that Butterick shall become engaged directly or indirectly in the publication of such a magazine, and provided, however, at time of such event or events Nast shall then still be engaged in the business of publishing a magazine devoted primarily to women's and girls' fashions;

(e) In the event Butterick shall execute an assignment or sub-license of its rights under this agreement, other than assignments or sub-licenses authorized hereunder or as herein provided;

(f) In the event that Butterick or its subsidiaries shall default in the payment of any principal or interest that shall become due and payable under the terms of any of the notes issued by any of them pursuant to a certain agreement between Butterick and Nast dated January , 1961, provided any such default has not been cured by Butterick within thirty (30) days after the receipt by Butterick of written notice from Nast of any such default or defaults.

11. Butterick may not assign or grant sub-licenses under this license, except:

(a) Butterick may assign this license provided it has procured Nast's written consent to such assignment. Nast agrees that it will not unreasonably withhold its consent to such an assignment by Butterick, provided, however, that Nast shall have the absolute right to refuse to consent to an assignment to any person, firm or corporation engaged in the publication of a magazine devoted primarily to women's and girls' fashions, so long as Nast is then engaged in the business of publishing a magazine devoted primarily to women's and girls' fashions, and further provided that Nast shall also have the absolute right to refuse to consent to the assignment of this license to any person, firm or corporation who does not coincidentally acquire Butter-

ick's pattern business. Any assignee who shall acquire this license with Nast's consent shall, in writing, assume and agree to perform all of Butterick's obligations thereunder.

(b) Butterick may grant sub-licenses of its rights under this agreement, subject to all the terms and conditions hereof, to any corporation, foreign or domestic which (exclusive of the directors' qualifying shares) shall be owned exclusively by Butterick or a wholly owned subsidiary of Butterick, and provided further that said sub-license shall terminate in the event that said corporation shall cease to be the wholly owned subsidiary of Butterick or of its said wholly owned subsidiary.

12. Nothing contained in this license shall be construed as an obligation on the part of Nast or Nast Ltd. to continue the publication of any of the magazines referred to in Paragraph 5 hereof, or as an obligation on the part of Butterick to continue to engage in the business of designing, manufacturing or selling such patterns.

13. In the event that Butterick shall request Nast's consent to an assignment of this license, said request shall be accompanied by a copy of the proposed form of assignment and assumption of obligations by the assignee and the name of the proposed assignee, and within ninety days of Nast's receipt of said request, Nast shall either give its written consent to Butterick or shall specify in writing its reasons for withholding consent. In the event that Butterick shall claim that said consent is being unreasonably withheld, the parties agree that such dispute shall be determined by arbitration in New York City, in accordance with the rules of The American Arbitration Association, and that the determination of such dispute in accordance with the rules then obtaining, shall be binding and conclusive upon the parties hereto, and that if it be determined by the arbitrator or arbitrators, as the case may be, that said consent was unreasonably withheld, said consent shall be deemed to be

then given by Nast, and any assignment thereafter to the proposed assignee by Butterick shall not cause the termination of this license.

14. Upon termination of this agreement, any and all rights to the licensed trade-name used in connection with the designing, manufacture and sale of such patterns and pattern promotional material, together with any good will of the business associated therewith, shall revert to Nast.

15. After the first twelve (12) years of this license, should the royalties payable by Butterick to Nast not equal the sum of One Thousand (\$1,000.00) Dollars in any calendar year, then Nast has the option to cancel this license upon sixty (60) days written notice. Butterick shall, however, have the right to continue this license in full force and effect by paying such minimum royalty to Nast within thirty (30) days after receipt of such notice.

16. Butterick agrees that the editorial content of The Vogue Pattern Book, Vogue Pattern Counter Catalogues and Vogue New Sewing Book shall be substantially of the same quality and purpose as was represented by the issues of those publications produced by Nast during 1958-1960 inclusive.

17. Butterick will hold harmless and defend Nast against any claim against Nast and/or Butterick, by reason of the distribution and sale of the licensed patterns and pattern promotional material by Butterick, except any claim involving the use or ownership of the licensed trade-name.

18. Nast will hold harmless and defend Butterick against any claim brought against Nast and/or Butterick, involving the use or ownership of the licensed trade-name.

19. While this license is in effect, neither Nast nor any of its subsidiary corporations shall assign the right to use said trade-name in conjunction with the sale of dress patterns or pattern

promotional materials unless such assignment is made expressly subject to this license.

20. Nast shall execute and cause its subsidiaries to execute any other and further documents that may reasonably be required by Butterick to evidence the license granted hereunder or to comply with any of the legal requirements of any country or state that may be necessary to permit Butterick or its subsidiaries to use such trade-mark in said countries.

21. "Paper dress patterns" for the purposes of this license shall include patterns for any article of clothing or apparel and patterns made of paper or any other composition of matter.

22. This agreement shall be construed in accordance with the laws of the State of New York.

23. All notices to be given hereunder shall be by certified or registered mail addressed to the parties as follows (or to such other address as either party shall designate by similar notice):

To Nast:

THE CONDÉ NAST PUBLICATIONS INC.
420 Lexington Avenue
New York 17, New York
Attention: President.

To Butterick:

THE BUTTERICK COMPANY, INC.
161 Sixth Avenue
New York 13, New York
Attention: President.

24. All payments hereunder, except as otherwise specified, shall be made by delivery thereof to the addresses designated in the preceding paragraph.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers and their seals to be hereunto affixed, the day and year first above written.

THE CONDÉ NAST PUBLICATIONS INC.

By
President

ATTEST:

.....
Secretary

THE BUTTERICK COMPANY, INC.

By
President

ATTEST:

.....
Secretary

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this day of January, 1961, before me came I. S. V. PATCÉVITCH to me known, who, being by me duly sworn, did depose and say that he resides at 157 East 70th Street in the City, County and State of New York; that he is the President of The Condé Nast Publications Inc., the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this day of January, 1961, before me came LEONARD TINGLE, to me known, who, being by me duly sworn, did depose and say that he resides at 168 Whitehall Boulevard, Garden City, Nassau County, and State of New York; that he is the President of The Butterick Company, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....

We hereby, jointly and severally, consent to the execution of the above mentioned license agreement and to the extent of any right or interest which we may have in the use of the trade-name or trade-mark "Vogue", in conjunction with the sale of dress patterns and pattern promotional material, as described in said license agreement, we do hereby severally grant to Butterick the sole and exclusive license to use such trade-name and trade-mark for such purpose, subject, however, to all of the terms and conditions set forth in the above mentioned license agreement.

Dated: 1961.

THE CONDÉ NAST PUBLICATIONS LTD.

By

Attest:

VOGUE (AUSTRALIA) PTY. LTD.

By

Attest:

EXHIBIT B

List of Machinery and Equipment

Description	Price
1 — 2/C Miehle Press 42" x 58" Model #61—Serial #21612-21613	\$ 80,000
1 — Webendofer—Wills Instruction Chart Press Serial #W-260	5,000
1 — Champion Envelope Machine, Serial #24	1,000
1 — Seybold Straight Cutter 64" — Serial #8052 ..	1,000
1 — Seybold Die Cutter 38" x 24" — Serial #474..	1,000
2 — Black & Clawson Printed Pattern Presses Model #585-53, Serial #293R-84001	118,000
Total	<u>\$206,000</u>

License Agreement

BETWEEN

THE CONDÉ NAST PUBLICATIONS INC.

AND

THE BUTTERICK COMPANY, INC.

Dated March 31, 1961

LICENSE AGREEMENT

AGREEMENT made this 31st day of March, 1961, by and between THE CONDÉ NAST PUBLICATIONS INC., a New York corporation, having a principal office at No. 420 Lexington Avenue, New York, New York (hereinafter called "Nast"), and THE BUTTERICK COMPANY, INC., a New York corporation, having a principal office at No. 161 Sixth Avenue, New York, New York (hereinafter called "Butterick"),

WITNESSETH :

WHEREAS, Nast hereby represents and warrants to Butterick that:

(a) Nast has heretofore adopted and has for many years used the word "Vogue" continuously as a trade-mark and trade-name (hereinafter referred to as the trade-mark or trade-name) in conjunction with the sale in the United States and Canada and other countries of the world of paper dress patterns designed, manufactured and sold by Nast, and in conjunction with the sale of pattern books, counter catalogs, sewing books, fashion folders and other promotional materials (all such items being hereinafter called "pattern promotional materials"), relating to the sale of paper dress patterns; and has heretofore authorized its wholly owned subsidiaries The Condé Nast Publications Ltd., a British corporation, with a principal office in London, England (hereinafter called "Nast Ltd."), to use said trade-name in England and various other countries of the world; and its wholly owned subsidiary VOGUE (AUSTRALIA) PTY., LTD., an Australian corporation, with its principal office in Melbourne, Australia (hereinafter called "Nast Pty."), to use said trade-name in Australia and various other countries of the world; and said subsidiaries have so used said trade-name under such authorization for a number of

years past in conjunction with the design, manufacture and sale of patterns and pattern promotional material; and

(b) Nast and said subsidiaries are collectively the sole owners of the right to use said trade-name in conjunction with the design, manufacture and sale of such patterns and promotional material in the United States, Canada, England and Australia and certain other countries of the world; and

(c) Said trade-name has been registered as a trade-mark for use in conjunction with the design, manufacture and sale of such patterns and pattern promotional material by Nast or one or more of its subsidiaries in the countries set forth in the attached schedule, and said registrations are presently owned by Nast and /or its said subsidiaries and are in full force and effect; and

(d) Neither Nast nor said subsidiaries have heretofore granted any rights to any other person, firm or corporation to use said trade-name in conjunction with the design, manufacture or sale of such patterns or pattern promotional material, either by assignment or license. This representation and warranty does not apply to licenses granted by Nast to its said subsidiaries; and

(e) Nast has no knowledge of the use of such trade-name by any other person, firm or corporation in connection with the design, manufacture or sale of such patterns or pattern promotional material in any country of the world; and

(f) The Corporations who have executed the licenses and consents at the foot of this agreement constitute all of the subsidiaries of Nast who have any right to use said trade-name in conjunction with the sale of such patterns or pattern promotional materials and said licenses and consents have been duly and validly executed by said Corporations and are binding upon each of them and enforceable by Butterick in accordance with the terms of said licenses and consents; and

WHEREAS, Butterick desires to procure the sole and exclusive license to use said trade-name "Vogue" in conjunction with the design, manufacture and sale of such patterns and pattern promotional material, but for no other purpose, upon the terms hereinafter set forth, and Nast and its said subsidiaries are willing to grant such license for such use,

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereinafter set forth, Nast hereby grants to Butterick the sole and exclusive right and license to use the trade-mark "Vogue" in the United States, Canada, England and Australia, and, to the extent that Nast or its subsidiaries may lawfully do so, everywhere in the world, on patterns designed, manufactured and sold by Butterick and on pattern promotional material, subject, however, to the following terms, conditions and limitations:

1. Butterick shall use said trade-name only on patterns and pattern promotional material which are dignified and of high quality.

(a) Where Butterick shall use the name "Vogue" only, such patterns and pattern promotional material shall be of the same high standards and quality of the patterns and promotional material heretofore designed, manufactured and sold by Nast and its subsidiaries, Butterick being fully acquainted with such standards.

(b) Where Butterick shall use the said name "Vogue" in association with the name "Butterick" or other name or names as a composite mark, then such patterns and pattern promotional material shall be at least equal to the standards and quality as those heretofore designed, manufactured and sold by Butterick and its subsidiaries.

2. Upon request, Butterick shall permit Nast, or its duly authorized representatives to examine, during normal business

hours, any and all patterns and promotional materials designed, manufactured and sold by Butterick bearing said trade-name, to ascertain that such patterns and promotional material conform in all respects to the above standards and quality.

3. Butterick agrees that it will not engage in or authorize any undignified methods in advertising, publicizing, marketing, promoting or distributing the patterns and pattern promotional material in connection with its use of the licensed trade-name.

4. While this license is in effect, Butterick shall notify Nast of the identity of any person, firm or corporation, (other than those operating lawfully under this license) using said trade-name in conjunction with the design, manufacture or sale of dress patterns or dress pattern promotional material in any country of the world (such use being hereinafter called "infringement"), and, in the event such infringement occurs in the United States, Canada, England, Australia or in any other country in which Nast has registered the trade-name in conjunction with the design, manufacture and sale of such patterns or pattern promotional material, Nast shall promptly take appropriate action, at its own cost and expense, to cause such infringement to cease, and in the event that Nast fails diligently to institute and prosecute an appropriate action or proceeding, Butterick is hereby authorized to institute and prosecute such action or proceeding against such infringer, in Nast's name or in the name of any Nast subsidiary, and Nast shall reimburse Butterick for necessary costs or reasonable legal expenses incurred in such action or proceeding.

5. While this license is in effect:

(a) Nast shall provide the following minimum editorial space to feature any patterns designed, manufactured and sold by Butterick under this license, upon the understanding that the

selection of the patterns to be so featured shall be wholly within the discretion of the editor or editors of the magazines listed below:

	<u>Magazine</u>	<u>Minimum Pages Per Calendar Year</u>
<i>Published</i>	Vogue	20
<i>By Nast</i>	Glamour	8
	Mademoiselle	8
<i>Published By Nast Ltd.</i>	Vogue	12

(b) Such editorial space shall be furnished free of any cost to Butterick, except that Butterick shall pay the cost of any dress-making involved in costumes that are the subject of such editorials; and in the event that Butterick desires to have additional editorial pages of similar content published in the above mentioned magazines and Nast is willing to publish such additional editorial pages, Nast agrees to make the same available at Nast's or Nast Ltd.'s actual cost for the production of said additional pages or portion thereof.

6. While this license is in effect, and so long as Nast or Nast Ltd. shall publish any of the magazines described in Paragraph 5 of this license, the editorial staff of said magazines shall, without cost to Butterick, cooperate with Butterick to advise and assist Butterick with respect to fashion trends and current fashion information that may be useful or necessary to Butterick in the design, manufacture and sale of patterns and in the preparation and publication of said promotional material, such advice and assistance to be rendered at the offices then maintained by the editorial staffs of said publications and during normal business hours.

7. Butterick shall pay a royalty for the use of such trade-name under this license in the manner and on the basis herein-after described:

(a) A royalty equal to 1% of the difference, if any, between (i) the total of all sales billed by Butterick and its subsidiaries, foreign or domestic, and by any sub-licensees referred to in Paragraph 11(b) hereof, to customers on account of the sale of all patterns made by Butterick and such subsidiaries and sub-licensees on and after April 1, 1963 (whether said patterns are sold in conjunction with the use of said trade-name or otherwise), and (ii) the total of any payments or credits made after such date by Butterick and such subsidiaries and sub-licensees to its or their customers with respect to patterns returned actually or constructively for credit to Butterick or to them. The royalty provided for in this subparagraph shall not be payable upon any transportation costs, sales taxes, duties or the cost of any special packing or any other charges separately made by Butterick or such subsidiaries or sub-licensees to its or their customers, nor shall Butterick or such subsidiaries or sub-licensees be entitled to credit for uncollectible accounts.

(b) Such royalties shall be paid semi-annually within ninety (90) days of the close of each semi-annual calendar period, except that any royalties due with respect to the year 1963, shall be paid on or before March 31, 1964, and all payments to Nast shall be accompanied by a statement certified by an authorized officer of Butterick, setting forth the total amount of billings (itemized by countries) made by Butterick and such subsidiaries and sub-licensees with respect to said sales during said period, and any payments or credits made to customers during such period.

(c) In the event any payments to be received by Butterick and such subsidiaries and sub-licensees, pursuant to any such sales, shall be restricted under the laws of any country from export or use outside of said country, Butterick or said subsidiaries or sub-licensees may make payment of royalties under this license with respect to such sales to Nast's designee in said country.

(d) Butterick shall be under no obligation to pay royalty with respect to any promotional materials distributed or sold by it or such subsidiaries or sub-licensees pursuant to this license, or with respect to any patterns distributed without charge.

(e) Royalties with respect to such sales shall be paid in the currency or currencies to be received pursuant to such sales by Butterick or such subsidiaries or sub-licensees.

8. Nast's obligation to provide editorial space in any magazine referred to in Paragraph 5 of this license shall terminate with respect to such magazine in the event that Nast or Nast Ltd. discontinues the publication of such magazine. Nast and Nast Ltd. shall not be deemed to have ceased publication of any such magazine if said magazine continues to be published by any corporation owned or controlled by Nast or Nast Ltd.

9. As long as this license is in effect, Nast shall take any and all action necessary to register, renew, re-register or use its best efforts otherwise to maintain the trade-mark registrations listed on the attached schedule in full force and effect, at Nast's sole cost and expense, unless such action shall be prohibited by or impossible under the laws of any listed country. Nast shall also register, renew and re-register said trade-mark while this license is in effect in such other countries of the world as Butterick shall request, and the cost, including any necessary legal expense of said registration, renewal and re-registration shall be borne equally by the parties hereto. Butterick shall make payment of its share of said cost within thirty (30) days of the receipt by Butterick from Nast of a statement itemizing such cost.

10. This license and the obligations of the respective parties hereunder shall remain in full force and effect unless and until said license shall be terminated in the manner and for the reasons hereinafter specified. Said license may be terminated by Nast in the following events:

(a) In the event that Butterick shall fail to pay the royalties due hereunder, provided such failure shall have continued for a period of thirty (30) days after receipt by Butterick of written notice of any such default; in the event Butterick shall dispute the amount of any royalty or royalties claimed by Nast hereunder, Butterick may make payment, under protest, of the amount demanded by Nast and institute an action or proceeding to recover any excess payment so made, and such payment and the institution of such action or proceeding shall not prejudice Butterick's rights under this license or its right to reimbursement;

(b) In the event that Butterick shall be adjudicated a bankrupt, or a receiver shall have been appointed of its assets, and said adjudication or appointment has not been set aside within ninety (90) days of said adjudication or appointment;

(c) In the event that Butterick shall cease the conduct of the business of selling dress patterns, unless coincidentally with the cessation of such business this license shall be transferred to a person, firm or corporation with the consent of Nast, as hereinafter provided;

(d) In the event that the majority of the then issued and outstanding stock of Butterick having voting rights shall become owned by a person, firm or corporation engaged in the publication of a magazine devoted primarily to women's and girls' fashions, or in the event that Butterick shall become engaged directly or indirectly in the publication of such a magazine, and provided, however, at time of such event or events Nast shall then still be engaged in the business of publishing a magazine devoted primarily to women's and girls' fashions;

(e) In the event Butterick shall execute an assignment or sub-license of its rights under this agreement, other than assignments or sub-licenses authorized hereunder or as herein provided;

(f) In the event that Butterick or its subsidiaries shall default in the payment of any principal or interest that shall become due and payable under the terms of any of the notes issued by any of them pursuant to a certain agreement between Butterick and Nast dated January 20, 1961, provided any such default has not been cured by Butterick within thirty (30) days after the receipt by Butterick of written notice from Nast of any such default or defaults.

11. Butterick may not assign or grant sub-licenses under this license, except:

(a) Butterick may assign this license provided it has procured Nast's written consent to such assignment. Nast agrees that it will not unreasonably withhold its consent to such an assignment by Butterick, provided, however, that Nast shall have the absolute right to refuse to consent to an assignment to any person, firm or corporation engaged in the publication of a magazine devoted primarily to women's and girls' fashions, so long as Nast is then engaged in the business of publishing a magazine devoted primarily to women's and girls' fashions, and further provided that Nast shall also have the absolute right to refuse to consent to the assignment of this license to any person, firm or corporation who does not coincidentally acquire Butterick's pattern business. Any assignee who shall acquire this license with Nast's consent shall, in writing, assume and agree to perform all of Butterick's obligations thereunder.

(b) Butterick may grant sub-licenses of its rights under this agreement, subject to all the terms and conditions hereof, to any corporation, foreign or domestic which (exclusive of the directors' qualifying shares) shall be owned exclusively by Butterick or a wholly owned subsidiary of Butterick, and provided further that said sub-license shall terminate in the event that said corporation shall cease to be the wholly owned subsidiary of Butterick or of its said wholly owned subsidiary.

12. Nothing contained in this license shall be construed as an obligation on the part of Nast or Nast Ltd. to continue the publication of any of the magazines referred to in Paragraph 5 hereof, or as an obligation on the part of Butterick to continue to engage in the business of designing, manufacturing or selling such patterns.

13. In the event that Butterick requests Nast's consent to an assignment of this license, said request shall be accompanied by a copy of the proposed form of assignment and assumption of obligations by the assignee and the name of the proposed assignee, and within ninety days of Nast's receipt of said request, Nast shall either give its written consent to Butterick or shall specify in writing its reasons for withholding consent. In the event that Butterick shall claim that said consent is being unreasonably withheld, the parties agree that such dispute shall be determined by arbitration in New York City, in accordance with the rules of The American Arbitration Association, and that the determination of such dispute in accordance with the rules then obtaining, shall be binding and conclusive upon the parties hereto, and that if it be determined by the arbitrator or arbitrators, as the case may be, that said consent was unreasonably withheld, said consent shall be deemed to be then given by Nast, and any assignment thereafter to the proposed assignee by Butterick shall not cause the termination of this license.

14. Upon termination of this agreement, any and all rights to the licensed trade-name used in connection with the designing, manufacture and sale of such patterns and pattern promotional material, together with any good will of the business associated therewith, shall revert to Nast.

15. After the first twelve (12) years of this license, should the royalties payable by Butterick to Nast not equal the sum of

One Thousand (\$1,000.00) Dollars in any calendar year, then Nast has the option to cancel this license upon sixty (60) days written notice. Butterick shall, however, have the right to continue this license in full force and effect by paying such minimum royalty to Nast within thirty (30) days after receipt of such notice.

16. Butterick agrees that the editorial content of The Vogue Pattern Book, Vogue Pattern Counter Catalogues and Vogue New Sewing Book shall be substantially of the same quality and purpose as was represented by the issues of those publications produced by Nast during 1958-1960 inclusive.

17. Butterick will hold harmless and defend Nast and its subsidiaries against any claim against them and/or Butterick, by reason of the distribution and sale of the licensed patterns and pattern promotional material by Butterick, except any claim involving the use or ownership of the licensed trade-name.

18. Nast will hold harmless and defend Butterick and its subsidiaries and sub-licensees against any claim brought against Nast and/or Butterick and its subsidiaries and sub-licensees involving the use or ownership of the licensed trade-name.

19. While this license is in effect, neither Nast nor any of its subsidiary corporations shall assign the right to use said trade-name in conjunction with the sale of dress patterns or pattern promotional materials unless such assignment is made expressly subject to this license.

20. Nast shall execute and cause its subsidiaries to execute any other and further documents that may reasonably be required by Butterick to evidence the license granted hereunder or to com-

ply with any of the legal requirements of any country or state that may be necessary to permit Butterick or its subsidiaries to use such trade-mark in said countries.

21. "Paper dress patterns" for the purposes of this license shall include patterns for any article of clothing or apparel and patterns made of paper or any other composition of matter.

22. This agreement shall be construed in accordance with the laws of the State of New York.

23. All notices to be given hereunder shall be by certified or registered mail addressed to the parties as follows (or to such other address as either party shall designate by similar notice):

To Nast:

THE CONDÉ NAST PUBLICATIONS INC.
420 Lexington Avenue
New York 17, New York
Attention: President.

To Butterick:

THE BUTTERICK COMPANY, INC.
161 Sixth Avenue
New York 13, New York
Attention: President.

24. All payments hereunder, except as otherwise specified, shall be made by delivery thereof to the addresses designated in the preceding paragraph.

A 91

13

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers and their seals to be hereunto affixed, the day and year first above written.

THE CONDÉ NAST PUBLICATIONS INC.

By I. S. V.-PATCÉVITCH
President

ATTEST:

M. E. CAMPBELL
Secretary

THE BUTTERICK COMPANY, INC.

By LEONARD TINGLE
President

ATTEST:

JOHN J. STROBEL
Secretary

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this 30th day of March, 1961, before me came I. S. V. PATCÉVITCH, to me known, who being by me duly sworn, did depose and say that he resides at 157 East 70th Street, New York 21, New York; that he is the President of The Condé Nast Publications Inc., the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

ANNABELLE PATTON

ANNABELLE PATTON
Notary Public, State of New York
No. 31-3036000
Qualified in New York County
Commission Expires March 30, 1961

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this 31st day of March, 1961, before me came LEONARD TINGLE, to me known, who, being by me duly sworn, did depose and say that he resides at 168 Whitehall Boulevard, Garden City, Nassau County; that he is the President of The Butterick Company, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

ANNABELLE PATTON

ANNABELLE PATTON
Notary Public, State of New York
No. 31-3036000
Qualified in New York County
Commission Expires March 30, 1963

We hereby jointly and severally consent to the execution of the above mentioned license agreement and, to the extent of any right or interest which we may have in the use of the trade-name or trade-mark "Vogue" in conjunction with the sale of dress patterns and pattern promotional material as described in said license agreement, we do hereby severally grant to Butterick the sole and exclusive license to use such trade-name and trade-mark for such purpose subject, however, to all of the terms and conditions set forth in the above mentioned license agreement.

Dated: March 31 1961.

THE CONDÉ NAST PUBLICATIONS LTD.

By I. S. V.-PATCÉVITCH
Director

Attest: REGINALD WILLIAMS
Director

S. E. WALL
Secretary

Dated: 19th April 1961.

VOGUE (AUSTRALIA) PTY. LTD.

By A. R. MILLIS
Director

Attest: S. W. BYRNE

Dated: March 31 1961.

LES ÉDITIONS CONDÉ NAST, S.A.

By I. S. V.-PATCÉVITCH
President

Attest: DANIEL SALEM

TRADE-MARK REGISTRATIONS FOR VOGUE PATTERNS

<u>Country</u>	<u>Registration No.</u>	<u>In Name of</u>	<u>Date of Expiration</u>
Austria	100,470 Re-Reg. No. 2833	Condé Nast Pubs. Inc.	Nov. 17, 1966
Belgium	32,757	Condé Nast Pubs. Inc.	Unlimited
Cuba	45,156	Condé Nast Pubs. Inc.	Oct. 7, 1972
France	165,846 (269,013) Ren. Nos. 463,111 (398,785)	Les Editions Condé Nast	Dec. 20, 1964
International	70,654 Ren. No. 145,252	Les Editions Condé Nast	Feb. 7, 1970
France	36,413 Ren. No. 65,977	Condé Nast Pubs. Inc.	Oct. 8, 1971
Eire	16,386 Ren. No. 36,005	Condé Nast Pubs. Inc.	May 13, 1971
Great Britain	364,441	Condé Nast Pubs. Ltd.	Nov. 13, 1970
Italy	34,364	Condé Nast Pubs. Inc.	Unlimited
New Zealand	63,290	Condé Nast Pubs. Inc.	Jan. 20, 1966
Spain	65,915	Condé Nast Pubs. Inc.	Dec. 17, 1967
Canada	42009/191	Condé Nast Pubs. Inc.	Aug. 3, 1977
United States	103,770	Condé Nast Pubs. Inc.	Apr. 13, 1975
United States	227,966 (Vogue & V-Girl)	Condé Nast Pubs. Inc.	May 17, 1967
United States	102,701 (V-Girl)	Condé Nast Pubs. Inc.	Feb. 23, 1975
United States	555,106 (Vogue Couturier Design)	Condé Nast Pubs. Inc.	Feb. 19, 1972
United States	288,023 (Vogue Dressmaking)	Condé Nast Pubs. Inc.	Oct. 20, 1971
United States	201,144 (Vogue Pattern Book)	Condé Nast Pubs. Inc.	July 21, 1965

LICENSE AGREEMENT

BETWEEN

THE CONDÉ NAST PUBLICATIONS INC.

AND

THE BUTTERICK COMPANY, INC.

Dated November 10, 1967
(Effective March 31, 1961)

LICENSE AGREEMENT

AGREEMENT made and executed November 10, 1967 (the "Execution Date" hereinafter), but effective (except as otherwise specified hereinafter) as of and from March 31, 1961 (the "Effective Date" hereinafter), by and between THE CONDÉ NAST PUBLICATIONS INC., a New York corporation, having a principal office at 420 Lexington Avenue, New York, New York (hereinafter called "Nast"), and THE BUTTERICK COMPANY, INC., a New York corporation, having a principal office at 161 Sixth Avenue, New York, New York (hereinafter called "Butterick"),

WITNESSETH :

WHEREAS, the same parties have entered into a certain License Agreement of March 31, 1961 between themselves relating to the VOGUE mark and trade name, and they now desire to substitute the present agreement for the former.

WHEREAS, the parties hereto agree upon the following definitions, for all purposes of this agreement:

(A) "Butterick Group" means Butterick and those of its Subsidiaries which it may from time to time designate as members of said Group by written notice to Nast; provided, however, that each of the following corporations shall be a member of the Butterick Group as long as it is a Subsidiary of Butterick:

<u>Name</u>	<u>Jurisdiction of Incorporation</u>
NYM Corporation	Delaware
Butterick Company Pty., Ltd.	Australia
Butterick N. Z. Limited	New Zealand
Patrons et Periodiques Internationaux S. A.	Belgium
Patrons et Periodiques Internationaux S. A.	France
The Butterick Publishing Company, Limited	United Kingdom
G. & W. Lawrie (N. Z.) Ltd.	New Zealand
The Butterick Publishing Company (S. A.) (Proprietary)	South Africa
Butterick Italiana S.p.A.	Italy

(B) "Mark" means the word VOGUE, whether used as a mark of any type (for example, but without limitation, as a trademark or as a service mark) or as a trade name, on and in conjunction with the design, manufacture, sale (or other distribution) or advertising of Patterns or Promotional Materials only.

(C) "Nast Group" means Nast and each of those which are its Subsidiaries as of the Effective Date, or at any time thereafter.

(D) "Pattern" means a pattern for making any article of clothing or apparel, whether the pattern is made in whole or in part of paper or of other material.

(E) "Promotional Materials" means pattern books, counter catalogs, sewing books, fashion folders and other promotional materials, relating to Patterns and the use and sale thereof.

(F) "Subsidiary" means any corporation in which another corporation owns or controls at any time, directly or indirectly (for example, without limitation, by way of one or more intermediate Subsidiaries), more than *fifty per cent. (50%)* of the issued share capital (less all fractional shares) entitled to vote at shareholders' meetings. One corporation shall be deemed to be another's Subsidiary only while, in respect of said other, said one corporation meets the foregoing definition.

WHEREAS, Nast hereby represents and warrants to Butterick that:

(a) Long prior to the Effective Date various members of the Nast Group adopted, and continuously for many years prior to and up to the Effective Date have used the Mark VOGUE in the United States, Canada, England, Australia and certain other countries of the world, on and in conjunction with the design, manufacture, sale (or other distribution) and advertising of Patterns and Promotional Materials.

(b) As of the Effective Date certain members of the Nast Group are, and as of the Execution Date they still remain, sole

owners of the Mark in conjunction with Patterns and Promotional Materials, in the United States, Canada, England, Australia and certain other countries of the world. Neither Nast nor any other member of the Nast Group makes any representation or warranty as to the effectiveness of the Mark, or as to its right to protect the Mark and/or to prevent others from using the Mark, in any country except the United States, Canada, England and Australia.

(c) Prior to each of the Effective Date and the Execution Date, the Mark has been registered in several countries by various members of the Nast Group with respect to Patterns and Promotional Materials, as set forth in the attached Schedule A. As of the Execution Date: Schedule A is complete and accurate, and except as indicated therein there are no applications to register the Mark for Patterns or Promotional Materials which are pending in any country in the name of any of the Nast Group. As of the Execution Date, and also as of the Effective Date (except as otherwise indicated in Schedule A): all of the registrations and applications listed in Schedule A are owned within the Nast Group, and are in full force and effect.

(d) As of the Effective Date, none of the Nast Group has granted to any other person, firm or corporation any right to use the Mark on or in conjunction with the design, manufacture, sale (or other distribution) or advertising of Patterns or Promotional Materials, whether by assignment, license or otherwise, and the same is true as of the Execution Date except for the present agreement and for said March 31, 1961 License Agreement. This representation and warranty does not apply to licenses, if any, granted by Nast to its Subsidiaries prior to the Effective Date.

(e) As of the Effective Date, none of the Nast Group has any knowledge of the use of the Mark by any other person, firm or corporation on or in conjunction with the design, manufacture, sale (or other distribution) or advertising of Patterns or Promotional Materials anywhere in the world, and the same is true as of the Execution Date except for use by the Butterick Group under

this agreement and under said March 31, 1961 License Agreement, and except for possible use of the Mark in some manner, without the authorization or consent of any member of the Nast Group, in Japan and in Greece. Neither Nast nor any other member of the Nast Group makes any representation or warranty that others are not using the Mark without its knowledge, authorization or consent, in conjunction with the design, manufacture, sale (or other distribution) or advertising of Patterns or Promotional Materials in any country other than the United States, Canada, England and Australia.

(f) As of the Execution Date, the following are the only Subsidiaries of Nast and each of them is wholly owned by Nast (except for directors' qualifying shares); and the same is true as of the Effective Date, except that Edizioni did not come into existence until after the Effective Date:

<u>Corporation Name</u>	<u>Country of Incorporation</u>	<u>Location of Principal Office</u>	<u>Hereinafter Called</u>
THE CONDÉ NAST PUBLICATIONS LTD.	United Kingdom	London, England	Nast Ltd.
THE CONDÉ NAST PUBLICATIONS (AUSTRALIA) PTY., LTD. [formerly VOGUE (AUSTRALIA) PTY., LTD.]	Australia	Melbourne, Australia	Nast Pty.
LES ÉDITIONS CONDÉ NAST S. A.	France	Paris, France	Editions
EDIZIONI CONDÉ NAST S.p.A.	Italy	Milan, Italy	Edizioni

(g) Three of the four corporations which have executed the Consent at the foot of this agreement (namely, Nast Ltd., Nast Pty. and Editions) are the same corporations which executed the

licenses and consents at the foot of said March 31, 1961 License Agreement. Said three corporations constitute all of the Nast Subsidiaries which, as of the Effective Date, have any right to use the Mark on or in conjunction with Patterns or Promotional Materials. Said Consent hereto and said earlier licenses and consents have been duly and validly executed, are binding upon each of the respective corporations which executed the same, and are enforceable by Butterick in accordance with their terms.

WHEREAS, Butterick desires to procure for the Butterick Group the sole and exclusive license to use the Mark VOGUE on and in conjunction with the design, manufacture, sale (or other distribution) and advertising of Patterns and Promotional Materials, but for no other purpose, upon the terms hereinafter set forth, and the members of the Nast Group are willing to grant such license for such use.

Now, THEREFORE, in consideration of the mutual covenants of the parties hereinafter set forth, Nast (acting for itself and for all other members of the Nast Group) hereby grants to the Butterick Group, jointly and severally, the sole and exclusive right and license to use the Mark VOGUE (whether alone, or together with one or more other marks or names, including "Butterick") everywhere in the world, on and in conjunction with the design, manufacture, sale (or other distribution) and advertising of (i) Patterns designed, manufactured and sold by or for any of the Butterick Group and (ii) Promotional Materials, subject, however, to the following terms, conditions and limitations:

1. Butterick shall use the Mark only on and in conjunction with Patterns and Promotional Materials which are of high quality and of a standard of dignity no less than that which is then adhered to in such fashion magazines as Nast may then publish.

- (a) From the Effective Date to and including the Execution Date, where any of the Butterick Group shall use the Mark VOGUE on or in conjunction with Patterns and Promotional Materials manufactured by or for any of said Group, the same shall be of at least the same high standards of quality as those

designed, manufactured, sold (or otherwise distributed) and advertised by the Nast Group just prior to the Effective Date, Butterick being fully acquainted with such standards.

(b) After the Execution Date, Patterns and Promotional Materials designed and manufactured by or for any of the Butterick Group and sold (or otherwise distributed) and advertised under or in conjunction with the Mark Vogue alone (or that Mark together with one or more other marks or names, including "Butterick") shall be of at least the same high standards of quality as those designed, manufactured, sold (or otherwise distributed) and advertised by the Butterick Group just prior to the Execution Date, Nast being fully acquainted and satisfied with such standards.

2. (a) Upon request, the Butterick Group shall permit Nast or its duly authorized representatives to examine, during normal business hours, (i) any and all Patterns and Promotional Materials designed and manufactured by or for members of the Butterick Group and sold or to be sold (or otherwise distributed) by or for them under or in conjunction with the Mark, and (ii) the manufacturing, packaging, storage and distribution operations of the Butterick Group in respect of said Patterns and Promotional Materials; all in order to ascertain that said Patterns and Promotional Materials conform in all respects to the above standards of quality. The Butterick Group shall not sell or otherwise distribute any such Patterns or Promotional Materials which do not comply with said applicable standards of quality, and shall promptly comply with all reasonable written requests by any of the Nast Group to remedy any lack of such compliance. Members of the Butterick Group shall furnish to members of the Nast Group, upon request from time to time, reasonable quantities of samples of such Patterns and Promotional Materials.

(b) From the Effective Date to and including the Execution Date, the editorial content of The Vogue Pattern Book, Vogue Pattern Counter Catalogues and Vogue New Sewing Book shall be substantially of the same quality and purpose as were represented by the issues of those publications produced by Nast during 1958-1960 inclusive. After

the Execution Date, such editorial content shall be substantially of the same quality and purpose as represented by the issues of said publications produced by Butterick during 1967 prior to the Execution Date. The parties shall periodically review with each other, and revise as they may agree from time to time, said standards of quality and purpose, and also the quality standards for Patterns and Promotional Materials referred to above.

3. Butterick agrees that it will not engage in or authorize any methods in advertising, publicizing, marketing, promoting or distributing Patterns and Promotional Materials in connection with its use of the Mark, which methods might reasonably be deemed adversely to affect Nast's reputation.

4. While this license is in effect, but only to the extent of information it receives, Butterick shall notify Nast of the identity of any person, firm or corporation (other than those operating lawfully under this license) using the Mark in conjunction with the design, manufacture, sale (or other distribution) or advertising of Patterns or Promotional Materials in any country of the world (such use being hereinafter called "infringement").

(a) In the event such infringement occurs in the United States, Canada, England or Australia, or in any other country in which any of the Nast Group has registered the Mark in conjunction with Patterns or Promotional Materials, an appropriate member of the Nast Group shall promptly take appropriate action, at its own cost and expense, to cause such infringement to cease; and in the event that in any such case it fails to institute an appropriate action or proceeding within ninety (90) days after such notification from Butterick, or if having instituted such action or proceeding it fails to prosecute the same diligently, then Butterick is hereby authorized to institute and/or prosecute such action or proceeding against such infringer, in the name of an appropriate member of the Nast Group, and Nast shall reimburse Butterick for necessary costs and reasonable legal expenses incurred in such action or proceeding. To the extent that any money recovery

in such an action or proceeding (i) relates to such infringement (whether such action or proceeding is instituted or prosecuted by a member of the Nast Group or by Butterick), and (ii) is in excess of the necessary costs and reasonable legal expenses incurred in such action or proceeding and with respect to such infringement, such net recovery shall be paid to or shall remain with Butterick, as the case may

(b) In the event such infringement occurs in any country other than one of those covered by subparagraph (a) next above, the Butterick Group is hereby authorized to take appropriate action, acting by any one or more members of that Group and at their own cost and expense, to cause such infringement to cease, and in connection therewith to institute and prosecute such actions and proceedings as they wish against such infringers, in the names of appropriate members of the Nast Group and/or of the Butterick Group. The entire amount of any money recovery in such an action or proceeding shall be paid to or shall remain with the Butterick Group members involved therein.

5. While this license is in effect:

(a) Nast shall provide the following minimum editorial space to feature any Patterns designed, manufactured and sold by the Butterick Group under this license, upon the understanding that the selection of the Patterns to be so featured shall be wholly within the discretion of the editor or editors of the magazines listed below:

	<u>Magazine</u>	<u>Minimum Pages Per Calendar Year</u>
<i>Published By Nast</i>	Vogue	20
	Glamour	8
	Mademoiselle	8
<i>Published By Nast Ltd.</i>	Vogue	12

(b) Such editorial space shall be furnished free of any cost to the Butterick Group, except that Butterick or another member of

the Butterick Group shall pay the cost of any dressmaking involved in costumes that are the subject of such editorials; and in the event that Butterick or another member of the Butterick Group desires to have additional editorial pages of similar content published in the above mentioned magazines and Nast is willing to publish such additional editorial pages, Nast agrees to make the same available at the publisher's actual cost for the production of said additional pages or portion thereof.

6. While this license is in effect, and so long as the Butterick Group is not engaged directly or indirectly in the publication of any self-created magazine devoted primarily to women's and girls' fashions, and so long as a member of the Nast Group shall publish any of the magazines described in Paragraph 5 of this license, the editorial staffs of said magazines of the Nast Group shall, without cost to the Butterick Group, cooperate with the latter to advise and assist its members with respect to fashion trends and current fashion information that may be useful or necessary to the Butterick Group in the design, manufacture and sale of Patterns and in the preparation and publication of Promotional Materials, such advice and assistance to be rendered at the offices then maintained by the editorial staffs of said Nast Group publications and during normal business hours.

7. Nast's obligation to provide editorial space in any magazine referred to in Paragraph 5 of this license shall terminate with respect to such magazine in the event that the publication of such magazine is discontinued within the Nast Group. Said Group shall not be deemed to have ceased publication of any such magazine if said magazine continues to be published by any corporation owned or controlled by one or more members of the Nast Group.

8. Nothing contained in this license shall be construed as an obligation on the part of any of the Nast Group to continue the publication of any of the magazines referred to in Paragraph 5 hereof, or as an obligation on the part of any of the Butterick Group to continue to engage in the business of designing, manufacturing or selling Patterns.

9. The Butterick Group shall pay a royalty for the use of the Mark under this license, in the manner and on the basis hereinafter described:

(a) Said royalty shall be equal to *one per cent. (1%)* of the difference, if any, between (i) the total of all sales billed by any of the Butterick Group to customers on account of the sale of all Patterns made by any of the Butterick Group on and after April 1, 1963 (whether said Patterns are sold in conjunction with the use of the Mark VOGUE or otherwise), and (ii) the total of any payments or credits made after such date by any of the Butterick Group to their customers with respect to Patterns returned actually or constructively for credit to any of the Butterick Group. The royalty provided for in this subparagraph shall not be payable upon any transportation costs, sales taxes, duties or the cost of any special packing or any other charges separately made by any of the Butterick Group to their customers, nor shall any of the Butterick Group be entitled to credit for uncollectible accounts.

(b) Such royalties shall be paid semi-annually within ninety (90) days of the close of each semi-annual calendar period, except that any royalties due with respect to the year 1963 shall be paid on or before March 31, 1964. Each payment of such royalties shall be accompanied by a statement certified by an authorized officer of the Butterick Group member making the payment, and setting forth (itemized by countries) the total amount of net billings made during said period (with respect to said sales) by the Butterick Group members covered by the statement, and any payments or credits made to their customers during said period.

(c) The books and records of the Butterick Group which relate to their Pattern sales and the amount of royalties to be paid by said Group under this agreement may be examined on behalf of the Nast Group, by independent certified public accountants of their choice and reasonably acceptable to the respective members of the Butterick Group, such examination to be made during regular business hours and, as to each member of the Butterick

Group, not more than twice in any calendar year. A member of the Butterick Group is not required to retain its said books and records, relating to a given semi-annual calendar period, for more than four (4) years after the delivery by that member of its said royalty statement covering the same semi-annual period, and may use any then customary information storage media for keeping such books and records (including, without limitation, punch cards, microfilm and other optical media, magnetic tape and other magnetic media). In addition to said semi-annual royalty statements, Butterick shall furnish to Nast interim reports relating to actual and projected sales of Patterns, which reports shall be substantially similar in content to those which Butterick furnished to Nast in 1967 prior to the Execution Date, and on a substantially similar schedule, or otherwise as to content and schedule as Butterick and Nast may agree from time to time.

(d) Except as otherwise provided in this agreement, or except as otherwise agreed upon from time to time by Butterick and Nast (for example, as agreed upon some years prior to the Execution Date, with respect to direct payment of royalties by The Butterick Publishing Company, Limited to Nast Ltd., both in the United Kingdom), royalties with respect to such sales shall be paid by Butterick to Nast. Such royalties shall be paid in the currency or currencies to be received pursuant to such sales by any of the Butterick Group.

(e) In the event any payments to be received by any of the Butterick Group pursuant to any such sales shall be restricted under the laws of any country from export or use outside of said country, Butterick or any of the Butterick Group may make payment of royalties under this license with respect to such sales to Nast's designee in said country.

(f) The Butterick Group shall be under no obligation to pay royalty with respect to any Promotional Materials distributed or sold by any of said Group pursuant to this license, or with respect to any Patterns distributed without charge.

10. As long as this license is in effect, Nast shall take any and all action necessary to register, renew, re-register or use its best efforts otherwise to maintain the trademark registrations listed on the attached Schedule A in full force and effect, at Nast's sole cost and expense. While this license is in effect, Nast shall also register, renew and re-register the Mark in such other countries of the world as Butterick shall request, and shall also take all steps necessary to enter any one or more of the Butterick Group as registered users of the Mark or otherwise to record this license, in such countries of the world as Butterick shall request; and the cost of the same, including any necessary legal expenses, shall be borne equally by Nast and Butterick. Butterick shall make payment of its share of said cost within thirty (30) days of the receipt by Butterick from Nast of a statement itemizing such cost. Nast shall not be obligated to take any action required by this paragraph if such action is or shall be prohibited by or impossible under the laws of the country concerned.

11. This license and the obligations of the respective parties hereunder shall remain in full force and effect unless and until this license shall be terminated in the manner and for the reasons hereinafter specified. This license may be terminated by Nast by giving not less than sixty (60) days' written notice thereof to Butterick, but only in any of the following events:

(a) In the event that the Butterick Group shall fail to pay the royalties due hereunder, provided such failure shall have continued for a period of thirty (30) days after receipt by Butterick of written notice of any such default. In the event Butterick shall dispute the amount of any royalty or royalties claimed by Nast hereunder, Butterick may make payment, under protest, of the amount demanded by Nast and institute an action or proceeding to recover any excess payment so made, and such payment and the institution of such action or proceeding shall not prejudice Butterick's right to reimbursement or the Butterick Group's license under this agreement.

(b) In the event that Butterick shall be adjudicated a bankrupt, or a receiver shall have been appointed of its assets, and

said adjudication or appointment has not been set aside within ninety (90) days of said adjudication or appointment.

(c) In the event that Butterick shall cease the conduct of the business of selling Patterns, unless coincidentally with the cessation of such business this license shall be transferred to a person, firm or corporation with the consent of Nast, as hereinafter provided.

(d) In the event Butterick shall execute an assignment of its rights under this agreement, other than assignments authorized hereunder or as herein provided.

(e) In the event that a majority of the then issued and outstanding stock of Butterick having voting rights is acquired by a person, firm or corporation engaged in the publication of a magazine devoted primarily to women's and girls' fashions, or in the event that Butterick acquires, by merger or otherwise, a majority interest in a concern then engaged in the publication of such a magazine, or acquires the title, goodwill and/or other assets of and the right to publish such a magazine which is then in existence and being published by some other person, firm or corporation; provided, however, that at the time of such event or events Nast shall then be engaged in the business of publishing a magazine devoted primarily to women's and girls' fashions. The printing of such a magazine and furnishing services incidental to such printing (including, without limitation, typesetting and other composition, printing, binding, and distribution) shall not be deemed to be engaging directly or indirectly in the publication of such a magazine, for the purposes of any provisions of this agreement.

(f) In the event that Butterick shall become engaged directly or indirectly in the publication of any self-created magazine devoted primarily to women's and girls' fashions; provided, however, Butterick has failed to agree to any and all reasonable precautions proposed by Nast to insure (i) that no public confusion is likely to arise from Butterick's publication of such a

magazine while continuing to operate the Butterick Pattern business under the license provided in this agreement, and (ii) that no deterioration is likely to occur in the quality of Patterns sold by Butterick under the Mark after Butterick has commenced publication of such magazine.

12. This agreement shall inure to the benefit of and be binding upon each member of either of the Nast Group or of the Butterick Group, and their respective legal representatives, successors and assigns. However, Butterick may not assign this agreement in whole or in part, except with Nast's written consent. Nast agrees that it will not unreasonably withhold its consent to such an assignment by Butterick; provided, however, that Nast shall have the absolute right to refuse to consent to an assignment to any person, firm or corporation engaged in the publication of a magazine devoted primarily to women's and girls' fashions, so long as Nast is then engaged in the business of publishing a magazine devoted primarily to women's and girls' fashions; and further provided that Nast shall also have the absolute right to refuse to consent to the assignment of this license to any person, firm or corporation who does not coincidentally acquire Butterick's Pattern business. Any assignee who shall acquire this license with Nast's consent shall, in writing, assume and agree to perform all of Butterick's obligations thereunder.

13. In the event that Butterick requests Nast's consent to an assignment of this license, said request shall be accompanied by a copy of the proposed form of assignment and assumption of obligations by the assignee and the name of the proposed assignee, and within ninety (90) days of Nast's receipt of said request, Nast shall either give its written consent to Butterick or shall specify in writing its reasons for withholding consent. In the event that Butterick shall claim that said consent is being unreasonably withheld, the parties agree that such dispute shall be determined by arbitration in New York City, in accordance with the rules of The American Arbitration Association, and that the determination of such dispute in accordance with the rules then obtaining shall be binding and conclusive upon the parties hereto, and that if it be deter-

mined by the arbitrator or arbitrators, as the case may be, that said consent was unreasonably withheld, said consent shall be deemed to be then given by Nast, and any assignment thereafter to the proposed assignee by Butterick shall not cause the termination of this license.

14. Upon termination of the license granted under this agreement, any and all rights to the Mark used in connection with the design, manufacture, sale (or other distribution) and advertising of Patterns and Promotional Materials shall revert to the Nast Group as their respective interests then appear, together with whatever goodwill, if any, of the business associated with the Mark may then be held by or within the Butterick Group.

15. Should the earned royalties payable hereunder by the Butterick Group (Par. 9 above) aggregate less than *Twenty-five Thousand Dollars (\$25,000.)* for any calendar year after 1972 (such a post-1972 calendar year being called a "Deficiency Year"), then Nast has the option to cancel this license upon sixty (60) days' written notice received by Butterick in the calendar year next following such a Deficiency Year and prior to July 1 of such next year. Butterick shall, however, have the right to continue this license in full force and effect for such next calendar year, by making a deficiency payment to Nast in an amount which, when added to earned royalties, if any, for the Deficiency Year shall equal *Twenty-five Thousand Dollars (\$25,000.)*; any such deficiency payment shall be made within sixty (60) days after receipt by Butterick of said cancellation notice from Nast.

16. Butterick will hold harmless and defend Nast and its Subsidiaries against any claim against any one or more of Nast, Butterick and the Subsidiaries of either, by reason of the distribution and sale by any of Butterick and its Subsidiaries of Patterns and Promotional Materials licensed under this agreement, except any claim involving the use or ownership of the Mark.

17. Nast will hold harmless and defend Butterick and its Subsidiaries against any claim brought against any one or more of Nast, Butterick and the Subsidiaries of either, involving the use or ownership of the Mark.

18. Nast shall execute and cause its Subsidiaries to execute any other and further documents that may reasonably be required by any of the Butterick Group to evidence the license granted hereunder or to comply with any of the legal requirements of any country or state that may be necessary to permit Butterick or its Subsidiaries to use the Mark in said countries or states.

19. This agreement shall be construed in accordance with the law of the State of New York.

20. All notices to be given hereunder shall be by certified or registered mail addressed to the parties as follows (or to such other address as either party shall designate by similar notice):

To Nast:

THE CONDÉ NAST PUBLICATIONS INC.
420 Lexington Avenue
New York, New York 10017
Attention: President.

To Butterick:

THE BUTTERICK COMPANY, INC.
161 Sixth Avenue
New York, New York 10013
Attention: President.

21. All payments hereunder, except as otherwise specified, shall be made by delivery thereof to the addresses designated in the preceding paragraph.

22. Said License Agreement entered into on March 31, 1961 is hereby canceled in its entirety as of said date, and the present agreement is hereby substituted therefor as of said date. Each member of the Nast Group hereby acknowledges that as of the Execution Date, and up to and including said date, (a) the members of the Butterick Group have each fully performed all of its obligations under each and every agreement which relates in any way to the Mark VOGUE and which is or has been in effect (as of the Execution Date, or previously) between any one or more members of the Butterick Group on the one hand, and any one or more members of the Nast Group on the other hand (including, without limitation, the present agreement and said March 31, 1961 License Agreement), (b) there are no outstanding uncured defaults by any of the Butterick Group under any of such agreements, and (c) there has been no event of a character which would entitle any one or more members of the Nast Group to terminate any of such agreements or any license or other rights of any of the Butterick Group under any such agreement.

23. Notwithstanding any other provision hereof, this present agreement will have no force and effect, and the above referred to License Agreement entered into on March 31, 1961 shall continue in full force and effect, unless and until, on or before June 30, 1968, American Can Company, a New Jersey corporation, acquires substantially all of the assets and business of Butterick and all of Butterick's rights and obligations hereunder and under said March 31, 1961 License Agreement are assigned to and assumed by American Can Company. Nast hereby consents to such assignment and assumption in connection with such acquisition, including the assignment by Butterick to said American Can Company of all of Butterick's rights under each of said two agreements, subject to all of its obligations thereunder, providing, however, that on or before the date of said acquisition, said assumption is effected in form and substance reasonably acceptable to Nast.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers and their seals to be hereunto affixed on the above set forth Execution Date.

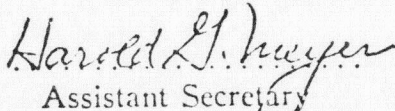
THE CONDÉ NAST PUBLICATIONS INC.

[CORPORATE SEAL]

By 

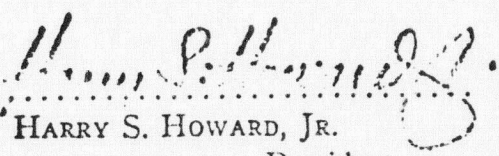
I. S. V.-PATCÉVITCH
Chairman and President

ATTEST:

.....

Assistant Secretary

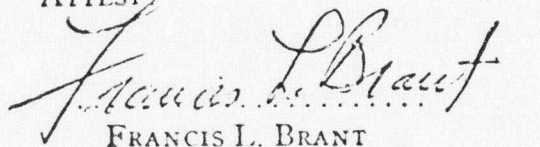
THE BUTTERICK COMPANY, INC.

[CORPORATE SEAL]

By 

HARRY S. HOWARD, JR.
President

ATTEST:


FRANCIS L. BRANT
Vice President and Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 10th day of November, 1967, before me personally came I. S. V.-PATCÉVITCH, to me known, who, being by me duly sworn, did depose and say: That he resides at 157 East 70th Street, New York, New York 10021; that he is Chairman and President of THE CONDÉ NAST PUBLICATIONS INC., one of the corporations described in and which executed the foregoing agreement; that he knows the seal of said corporation; that the seal affixed to said agreement is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Doni Thompson

Notary Public
[NOTARY STAMP]
No. 60 3974335
Qualified in Westchester County
Certificate Filed in New York County
Commission Expires March 30, 1969

[NOTARY SEAL]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 10th day of November, 1967, before me personally came HARRY S. HOWARD, JR., to me known, who, being by me duly sworn, did depose and say: That he resides at 150 Wierimus Lane, Hillsdale, New Jersey; that he is President of THE BUTTERICK COMPANY, INC., one of the corporations described in and which executed the foregoing agreement; that he knows the seal of said corporation; that the seal affixed to said agreement is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Harold S. Bareford, Jr.

Notary Public
[NOTARY STAMP]

HAROLD S. BAREFORD, JR.
Notary Public, State of New York
No. 60 5176050
Qualified in Nassau County
Certified in New York County
Commission Expires March 30, 1968

[NOTARY SEAL]

CONSENT

The following Nast Subsidiaries hereby consent, jointly and severally, to the execution of the foregoing License Agreement of November 10, 1967 (effective March 31, 1961) by and between Nast and Butterick; and to the extent of any right, title or interest which it may have in or to the Mark VOGUE in conjunction with Patterns and Promotional Materials as described in said License Agreement, each of said Subsidiaries hereby joins in said License Agreement and in the grant of a license as set forth therein to the Butterick Group in respect of the Mark VOGUE; said consent and joinder being effective as of March 31, 1961 (but as to EDIZIONI, as of the date of its incorporation).

Dated:

21st November, 1967.

THE CONDÉ NAST PUBLICATIONS LTD.

By

I. S. V.-PATCÉVITCH

Director

Attest:

Regina S. Williams
DirectorRowland Barker Jones
Secretary

Dated:

December 6, 1967.

THE CONDÉ NAST PUBLICATIONS
(AUSTRALIA) PTY., LTD.

By

Director

Attest:

M. J. Denner
Secretary

A 116

21

Dated:

November 27, 1967.

LES ÉDITIONS CONDÉ NAST S.A.

By

Henry Putman
President

I. S. V.-PATCÉVITCH
Director

Attest:

Patrice
Secretary

Dated:

November 30, 1967.

EDIZIONI CONDÉ NAST S.p.A.

By

I. S. V.-PATCÉVITCH
President

Attest:

Francis Putman
Secretary
Administratore Delegato

SCHEDULE A

to VOGUE License Agreement between
Nast and Butterick

TRADEMARK REGISTRATIONS FOR "VOGUE" PATTERNS AND PATTERN PUBLICATIONS

Country	Mark	Registration		Product	Current Registrant*	Next Expiration Date (as of the Execution Date)
		Number	Effective Date			
†African and Malagasy Union (Libreville Agreement)	VOGUE	504,112 (Extension of French Reg. No. 398,785 of Dec. 20, 1949.)	Dec. 29, 1964	Patterns	Editions	Dec. 29, 1984
†African and Malagasy Union	VOGUE	504,113 (Extension of French Reg. No. 414,166 of Aug. 22, 1951.)	Dec. 29, 1964	Printed matter, publications, stationery, advertisement items (among others)	Editions	Dec. 29, 1984
†Australia	VOGUE	A160,779 (Butterick Company Pty., Ltd., entered as Registered User Jan. 11, 1965.)	Jun. 21, 1960	Patterns	Nast	Jun. 21, 1981
†Australia	VOGUE	22,179	Jun. 9, 1914	Periodicals, magazines	Nast	Jun. 9, 1970
†Austria	VOGUE	100,470 (Re-Reg. No. 2,833)	Nov. 17, 1926	Patterns	Nast	Nov. 17, 1976
Belgium	VOGUE	32,757	Dec. 20, 1926	Patterns	Nast	Unlimited
†Belgium	VOGUE	32,753	Dec. 21, 1926	Publications, magazines, periodicals	Editions	Unlimited
Canada	VOGUE	42,009/191	Aug. 3, 1927	Patterns	Nast	Aug. 3, 1977
†Colombia	VOGUE	12,355	Aug. 25, 1939	Periodic publication	Nast	Aug 25, 1969
Cuba	VOGUE	45,156 (Based on U. S. A. Reg. No. 103,770 of Apr. 13, 1915.)	Oct. 7, 1927	Patterns	Nast	Oct. 7, 1972
†Denmark	VOGUE & V-GIRL	667/1930 (Based on British Reg. No. 364,441 of Nov. 13, 1914.)	Jun. 21, 1930	Patterns	Nast Ltd.	Jun. 21, 1970
†Ecuador	VOGUE	01817 (Re-Reg. No. 16) Nov. 10, 1938 (Ren. No. 26) Feb. 24, 1959	Feb. 13, 1919	Periodic publication	The Vogue Company Nast	[Expired Feb. 13, 1939] Feb. 24, 1974
Eire	VOGUE & V-GIRL	16,336 (Ren. No. 36,095)	May 13, 1929 May 13, 1943	Patterns	Nast	May 13, 1971

*Registrants and applicants are identified by their short names, as set forth in the above License Agreement (p. 4 thereof).

†Indicates an item which is new in this Schedule A, or which here embodies different data, as compared with the VOGUE trademark registration list accompanying the March 31, 1961 License Agreement.

A
22
117

SCHEDULE A—(Continued)

Country	Mark	Registration		Product	Current Registrant*	Next Expiration Date (as of the Execution Date)
		Number	Effective Date			
†France	VOGUE	165,846 (Latest Ren. No. 525,338)	Jun. 6, 1930 Nov. 6, 1964	Patterns	Editions	Nov. 6, 1979
France	VOGUE	36,413 (Latest Ren. No. 65,977)	Oct. 8, 1926 Oct. 8, 1956	Patterns	Nast	Oct. 8, 1971
†France	VOGUE	261,356	Apr. 11, 1929	Publications, paper articles, etc.	Editions	[Not available]
†France	VOGUE	414,166 (Ren. No. 534,853)	Aug. 22, 1951 Aug. 22, 1966	Printed matter, publications, stationery, advertisement items (among others)	Editions	Aug. 22, 1981
†France	VOGUE	348,299 (Ren. No. 475,254)	Nov. 22, 1943 Nov. 22, 1953	(Ditto)	Editions	Nov. 22, 1973
†France	VOGUE EUROPE	484,252	Nov. 25, 1959	All products	Editions	Nov. 25, 1974
†France	VOGUE	492,954	Dec. 30, 1969	All products	Editions	Dec. 30, 1975
Great Britain	VOGUE & V-GIRL	364,441	Nov. 13, 1914	Patterns	Nast Ltd.	Nov. 13, 1970
†Great Britain	VOGUE-KNIT	685,045	Dec. 23, 1963	Patterns	Nast Ltd.	Dec. 28, 1970
†Great Britain	VOGUE	696,667	Mar. 8, 1965	Patterns	Nast Ltd.	Mar. 8, 1972
†Hungary	VOGUE	40,013 (Latest Ren. No. 105,495)	Mar. 12, 1921 Mar. 12, 1961	Publications, printed matter	Editions	Mar. 12, 1971
International	VOGUE	70,654 (Based on French Reg. No. 165,846 of Jun. 6, 1930) (Ren. No. 145,252)	Jul. 30, 1930 Feb. 7, 1950	Patterns	Editions	Feb. 7, 1970
†International	VOGUE	158,005 (Based on French Reg. No. 414,166 of Aug. 22, 1951.)	Dec. 3, 1951	Printed matter, publications, stationery, advertising items (among others)	Editions	Dec. 3, 1971
†International	VOGUE	51,177 (Based on French Reg. No. 348,299 of Nov. 22, 1943.) (Latest Ren. No. 321,634)	Mar. 21, 1927 Sep. 26, 1966	(Ditto)	Editions	Sep. 26, 1986

*Registrants and applicants are identified by their short names, as set forth in the above License Agreement (p. 4 thereof).

†Indicates an item which is new in this Schedule A, or which here embodies different data, as compared with the VOGUE trademark registration list accompanying the March 31, 1961 License Agreement.

A
118
23

SCHEDULE A—(Continued)

Country	Mark	Registration		Product	Current Registrant*	Next Expiration Date (as of the Execution Date)
		Number	Effective Date			
†International	VOGUE EUROPE	227,443 (Based on French Reg. No. 484,252 of Nov. 25, 1959.)	Jan. 9, 1960	All products	Editions	Jan. 9, 1980
†Italy	VOGUE	160,170	Jun. 13, 1961	Periodicals, magazines	Editions	Jun. 13, 1981
†Italy	VOGUE	161,199 (Re-registration of Reg. No. 34,364 of Nov. 20, 1926.)	Jun. 13, 1961	Patterns	Nast	Jun. 13, 1981
†New Zealand	VOGUE	63,290	Jan. 20, 1959	Patterns, publications	Nast	Jan. 20, 1980
The following were entered as registered users, Aug. 7, 1959, under the New Zealand registration:						
Vogue (Australia) Pty. Limited [Australia] Les Editions Condé Nast S. A. [France] The Condé Nast Publications Ltd. [England]						
†Norway	VOGUE & V-GIRL	18,622 (Based on British Reg. No. 364,441 of Nov. 13, 1914.)	Dec. 3, 1929	Patterns, etc.	Nast Ltd.	Dec. 3, 1969
†Peru	VOGUE	9225 (Latest Ren. No. 59,204)	Jul. 8, 1930 Feb. 1, 1961	Periodicals, publications	Nast	Feb. 1, 1967
Spain	VOGUE	65,915	Dec. 17, 1927	Patterns	Nast	Dec. 17, 1967
†Spain	VOGUE	268,086 (Division of Int. Reg. No. 158,605 of Dec. 3, 1951)	Jul. 1, 1954	Printed matter, publications, etc.	Editions	Jul. 1, 1984
†Sweden	VOGUE & V-GIRL	37,373 (Based on British Reg. No. 364,441 of Nov. 13, 1914.)	Jul. 22, 1930	Patterns	Nast Ltd.	Jul. 8, 1970
United States	VOGUE	103,770	Apr. 13, 1915	Patterns	Nast	Apr. 13, 1975
†United States	VOGUE & V-GIRL	227,966	May 17, 1927	Patterns	Nast	May 17, 1967 [Expired]
United States	V-GIRL	102,701	Feb. 23, 1915	Patterns	Nast	Feb. 23, 1975
United States	VOGUE COUTURIER DESIGN	555,106	Feb. 19, 1952	Patterns	Nast	Feb. 19, 1972
United States	VOGUE DRESSMAKING	288,023	Oct. 20, 1931	Publication	Nast	Oct. 20, 1971
†United States	VOGUE PATTERN BOOK	201,144	Jul. 21, 1925	Publication	Nast	Jul. 21, 1985

*Registrants and applicants are identified by their short names, as set forth in the above License Agreement (p. 4 thereof).

†Indicates an item which is new in this Schedule A, or which here includes different data, as compared with the VOGUE trade-mark registration list accompanying the March 31, 1961 License Agreement.

A 119
24

SCHEDULE A—(Continued)

TRADEMARK APPLICATIONS FOR "VOGUE" PATTERNS AND PATTERN PUBLICATIONS

Country	Mark	Application		Product	Applicant*	Application Status (as of Execution Date)
		Ser. No.	Filing Date			
†Greece	VOGUE	31,955	Jul. 14, 1964	Patterns	Nast Ltd.	Pending
		(This application apparently suspended, awaiting outcome of a trademark opposition in Greece by Nast Ltd. against D. M. Panaghopoulos, relating to the latter's Greek Reg. No. 34,073, VOGUE-VOCK, for dress patterns.)				
†Japan	VOGUE	30,798/61	Oct. 23, 1961	Patterns	Nast	Apparently abandoned

*Registrants and applicants are identified by their short names, as set forth in the above License Agreement (p. 4 thereof).

†Indicates an item which is new in this Schedule A, or which here embodies different data, as compared with the VOGUE trademark registration list accompanying the March 31, 1961 License Agreement.

A
120
25

December 26, 1967

Dear Harry -

I have just seen the February/March 1968 issue of the International Vogue Pattern Book, and I must register with you our concern over the handling of the title on the cover — which I already mentioned to you the other day.

It seems your art people (whether intentionally or not) are disassociating "Pattern Book" from "Vogue." The correct title of the book is "VOGUE PATTERN BOOK." In the current presentation, obviously, they are trying to sell the book on the strength of the Vogue title only. I think this is a great mistake and may lead to misunderstandings and problems in the future if this book were to be mistaken for VOGUE Magazine itself.

I trust you see our point and will give the necessary instructions to restore the title "VOGUE PATTERN BOOK" on all future issues.

Best regards -

As ever,

Mr. Harry Howard
The Butterick Co. Inc.
161 Sixth Avenue
New York, N.Y.

*Noted
C. H.*

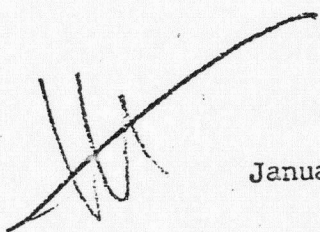
A 122

THE BUTTERICK COMPANY, INC.

161 SIXTH AVENUE

NEW YORK, N. Y. 10013

HARRY S. HOWARD, JR.
PRESIDENT

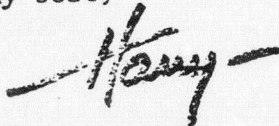

January 8, 1968

Dear Pat:

This is just to let you know that we have made sure that the words, "Pattern Book" follow the word, "Vogue" on our titles commencing with the April-May issue. There was no effort on our part to suggest that this was a Vogue Magazine pure and simple.

In your absence, I took the liberty of calling Perry Ruston to inform him on this matter.

My best,



Mr. Iva S. V. Patcévitch
President
The Condé Nast Publications Inc.
420 Lexington Avenue
New York, N. Y. 10017

November 14, 1969

Dear Harry -

I forgot to discuss with you, when we talked on the phone the other day, one more subject with which we are concerned.

This is the perennial question of the use of the VOGUE logo, on the Vogue Pattern Book International covers.

While I was in Europe this autumn, the matter was brought to my attention once more and this time with definite complaints that there have been incidents of confusion in the minds of newsstand buyers as to whether they were buying an issue of VOGUE Magazine or an issue of the VOGUE PATTERN BOOK.

You will recall that this was brought to your attention some time ago. We feel very strongly that the logo for the "PATTERN BOOK" should be as prominent as the VOGUE title, thereby avoiding any possible misunderstanding as to whether it is VOGUE itself or VOGUE PATTERN BOOK.

Undoubtedly, the present form is something that your Art Director or the layout people think is attractive, but then they are not concerned with our side of the problem.

If I may make the suggestion, I think you should very forcefully tell them to change this logo, for it really doesn't make very much sense to treat the cover lines in that manner; it would indicate that they are trying to hide the pattern angle of the book by subduing it under the VOGUE title. What you want to sell is VOGUE PATTERNS, not VOGUE.

Outside of that, we feel that the International Pattern Book looks very well -- and the printing is attractive. The only other comment I

-2-

can make (which, in fact, I make very often to the editors of all our fashion magazines) is that live models who pose for fashion photographs should "look happy." In most instances this is the case, but for example, if you look at your Dec-Jan issue you will see that the models on pages 3 through 11 all look either disinterested, bored or plain sulky -- which can't help the sale of patterns.

Kindest regards --

Mr. Harry Howard
Butterick Patterns
161 Sixth Avenue
New York, N. Y. 10013

January 19, 1970

Dear Harry -

I have received your letter of January 13th, with the dummy of the proposed new cover format for the International VOGUE PATTERN BOOK and am very glad to say that this is just what we wanted. I am sure that the introduction of this new format should preclude further controversy on this subject.

There is, however, another matter which was on my desk for some time — one which I must take up with you.

This time it deals with some misunderstandings in Australia.

For your information, I am enclosing copies of letters exchanged between Bernie Leser and your Mr. McAlpin. I think that this sort of situation arises, possibly, because your people are not really aware of the terms nor of the spirit of the original license agreement between us and I therefore venture to suggest that perhaps you should let them have excerpts from the license agreement, particularly the pertinent passages on pages 5, 6 and 7, dealing specifically with the use of the Mark VOGUE in promotional materials. (To save time for you, herewith are Xeroxes of these pages.)

For instance, if they were aware of the provisions in Paragraph 2.(a) on page 6, stating that "the Butterick Group shall permit Nast or its duly authorized representatives to examine . . . any and all Patterns and Promotional Materials designed and manufactured by or for members of the Butterick Group and sold or to be sold (or otherwise distributed) by or for them under or in conjunction with the Mark," — Mr. McAlpin could not take the, to say the least, somewhat high-handed attitude in his letter of merely announcing unequivocally what his plans were and being obviously resentful of our objections to what, in our opinion, are misleading uses of the Vogue name.

over

Specifically, a promotional plan for a feature to be called, "Women in Vogue" (for the more mature figure!) is a type of title which, if run at Butterick's behest in a women's weekly mass magazine, would be an objectionable use of the word VOGUE in this connection, and they simply must think up some other title. (Obviously, the most straightforward title for such a feature would be "Vogue Patterns for the more mature figure.")

I know how difficult it is to intervene at all levels of production of patterns and of promotional materials and I am sure that very often things are done by zealous members of the staff without the Management's knowledge. That is why I believe that a directive from you, explaining the terms of the license agreement and emphasizing the cooperative spirit in which it was devised, would be very helpful and should serve to forestall any use of the word "Vogue" which may be contrary to our understanding.

Of course the simplest way to explain the rules of the game is to say that the word "Vogue" may never be used alone, for if so used it means "Vogue Magazine" and nothing else. ("Vogue says," "Vogue's opinion," "Vogue's Viewpoint," etc., etc., means to the public, "Vogue Magazine says," etc., etc.) In all our litigations to protect the Vogue trademark registration, the courts supported us and, as Judge Ryan stated in his ruling:

"We find that the word 'Vogue' has acquired a secondary meaning so that the mention of 'Vogue' unaccompanied by further description brings to the mind of the public an immediate connotation of the plaintiff's publications. Though 'Vogue' is a word of everyday speech the plaintiff has, through constant usage, created in the public mind an association between its publications and the wearing apparel and accessories worn by the American woman of discriminating and fashionable tastes, which are reported, pictured, sponsored or recommended. In the world of fashion, plaintiff has acquired a common law right to its exclusive use."

I'd be much happier if there were no need for all these explan-

A 127

- 3 -

ations, but then . . . !

My best for 1970.

Sincerely,

Mr. Harry Howard
Butterick Patterns Co.
161 Sixth Avenue
New York, N.Y.

P. S. What do you think of Simplicity's merger with Bristol Myers?

ISVP

A 128
BUTTERICK COMPANY PTY. LTD.

10A WEBB STREET, CROYDON, N.S.W., 2132. PHONE 74-9236

P.O., BOX 75, CROYDON, 2132

November 5, 1969

Mr. B.H. Leser,
Managing Director,
The Conde' Nast Publications Pty. Ltd.
49 Clarence Street,
SYDNEY. N.S.W. 2000

Dear Bernie,

We have your letter of October 29, referring to the publicity for Vogue Patterns in The Australian Women's Weekly.

In the past we have gone out of our way to accede to your request for the use of the word "Patterns" whenever we have a feature.

However, our plans from hereon include several new projects which we will be featuring. The pages in The Australian Women's Weekly to which you refer introduce the first of these: VERY EASY VERY VOGUE

This is a new section of our range which brings the best in fashion in the easiest way to the home dressmaker.

Another feature planned is "WOMEN IN VOGUE". These patterns form another section of the catalogue and are for the more mature figure, but again emphasising Fashion.

Our VOGUE AMERICANA designs by the leading designers in the States have already gained a considerable following and sales.

As you will see, we can no longer continue writing "Patterns" everytime we use the word "Vogue", and believe that our publicity will do nothing but good for your magazine.

Yours sincerely,



Director

October 29, 1969

Mr. I. McAlpin,
Director,
Butterick & Co. Pty. Ltd.,
10A, Webb Street,
CROYDON. 2132

Dear Mac,

We have had discussions - from time to time - on the way the AUSTRALIAN WOMEN'S WEEKLY uses the name "VOGUE" in its promotion of VOGUE PATTERNS.

I refer you to its October 29 issue, Page 29, which is headed "Vogue's Easy Way to High Fashion".

There is no question that readers would take this to mean VOGUE magazine. You have told me that you have explained the position on previous occasions to the Editor of WOMEN'S WEEKLY and I would now ask you to explain to her again the need for the distinction between VOGUE Magazine and VOGUE PATTERNS to be made much more clearly than has been the case in this particular issue as well as in other issues.

For reasons to do with our trade name rights, I would also ask you to confirm your conversation with the Editor in writing, and to let me have a copy of the letter for our records.

I was very glad to see you at the Tullo Opening last night in Melbourne.

With best wishes,

Yours sincerely,

BERNARD H. LESER
Managing Director.

NOTED

A 130

A DIVISION OF AMERICAN CAN COMPANY • 161 SIXTH AVENUE, NEW YORK, N.Y. 10013

HARRY S. HOWARD, JR. PRESIDENT

January 13, 1970

Dear Pat:

At long last, we have come to a solution of the cover format which is satisfactory to our creative and management people. I think you and your people will be pleased to see the result. I now feel this will not conflict on the newsstand with Vogue Magazine itself.

We will begin using this new format effective with our June-July issue.

Since this is the first letter from me to you in the new year, I wish you a very happy and successful one.



Mr. Iva S. V. Patcévitch, Chairman
The Condé Nast Publications Inc.
420 Lexington Avenue
New York, N. Y. 10017

January 19, 1970

Dear John -

You may recall that during my visit in London we discussed afresh the logo used by Butterick of the Vogue International Pattern Book. We felt it objectionable, in the sense that the word "Patterns" was subdued and only "VOGUE" was shown prominently, thereby leading perhaps to misunderstanding on the part of the public as to what they were buying.

As a result of some discussions and correspondence with Buttericks, I am now assured by them that starting with the June-July issue of the International Vogue Pattern Book a new logo will be used, as per enclosed sample. This is, of course, acceptable to us and should preclude any further controversy on this subject.

Sincerely yours,

Mr. John Perry
Condé Nast Publications Ltd.

A 132

January 19, 1970

Dear Bernie -

I am enclosing copy of my letter to Mr. Howard, which I think is self-explanatory. I will let you know when I hear from him.

I am also enclosing a Xerox of a new cover logo they propose to use on the International VOGUE PATTERN BOOK, starting with the June-July issue. This is a result of objections we raised with Buttericks here, regarding the misunderstandings caused, in our opinion, by the use of the VOGUE logo on their pattern book covers in the past. This is a pertinent example of the fact that the Butterick Gen'l H.Q. cooperates with us in the right spirit and accedes to our legitimate requests.

If, as a result of my letter to Howard he does write to McAlpin and the latter approaches you in a conciliatory manner, you could cite as an example the change in the Pattern Book logo to suit our legitimate request.

If Daniel is still in Australia when this letter reaches you, please show it to him for I had discussed this matter with him when he was in New York.

Sincerely yours,

Mr. Bernard Leser
VOGUE AUSTRALIA

To: Mr. Allison

From: Mr. Rayner

Date: August 16, 1972

Copy to:

Subject:

I have spoken to the editors of Vogue, Glamour and Mademoiselle regarding their working arrangement with Butterick. This is how they operate.

1. Vogue

The Associate Editor, Carrie Donovan, selects from Butterick the patterns she wishes to feature in Vogue. Once having selected the patterns, Miss Donovan asks the Fabric Editor, Margaret Ingersoll, to find fabric which will be used to make the outfit. Generally Mrs. Ingersoll chooses some fabric manufacturer important to Vogue in business so that we can use the Butterick pages as a vehicle to feature his fabric editorially. Once the fabric is chosen the pattern is sent to a tailor and the outfit is made.

2. Glamour

Glamour operates in much the same fashion as Vogue, except the Pattern and Craft Editor, Linda Schottland, chooses both the pattern and the fabric (again using fabrics wherever possible from important advertisers). Occasionally Glamour will collaborate in designing the pattern, such as they did in the August 1972 issue, where they featured the Glamour perfect pattern.

The reason for the increase in editorial pages featuring patterns in recent years is because of increased interest in home sewing. This was demonstrated in a readership survey dated January, 1971 (see attached).

3. Mademoiselle

Mademoiselle works almost in the same fashion as the other two books. Nancy Pease, Associate Fabric Editor, chooses or works with Butterick on the patterns and then the fabric is selected in an editorial meeting. Again the increase in pages is due to reader demand. Please see attached research report.

WBL

To: Grace Mirabella

From: Ruth McCarthy Manton

Date: September 23, 1974

Copy to: Richard Shortway
Barbara McKibbin
Elizabeth Herriger
Neil ButwinSubject: GIORGIO SANT ANGELO/WAMSUTTA

As you know, Giorgio did a small collection of terry cloth robes, swimsuits, and long cotton dresses, made from Wamsutta sheets and towels. I put Giorgio in touch with Bill Fine, at Wamsutta, and Vogue Patterns to see if they couldn't jointly promote the collection.

The net result is that last Thursday, 9/19, Giorgio signed a contract with Vogue Patterns to have three of the outfits reproduced -- the terry cloth kimono robe, and I believe, two of the dresses. The patterns will be available in the stores in April.

If we are interested in this editorially, I would like very much to know, as we are not on Wamsutta's schedule at the moment.

As soon as we know our plans, I'd like to be able to get back to Bill Fine regarding the advertising.

Thanks.

Reh

RMM:ra

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

THE CONDE NAST PUBLICATIONS, INC.,	:	OPINION
	:	<u>AND ORDER</u>
Plaintiff,	:	
-against-	:	
UNITED STATES OF AMERICA,	:	75 Civ. 4909
	:	(JMC)
Defendant.	:	

-----X

CANNELLA, D.J.:

Plaintiff is entitled to a partial refund of overpayments of federal income tax made by it in 1967 and 1968.

This case was submitted to the Court upon a stipulation of facts to which six exhibits are attached. Based upon the stipulation and the exhibits thereto, the Court finds the facts to be as follows.

Conde Nast Publications, Inc. ["Nas-"] is a company which prior to 1961 was engaged in the business of publishing and printing magazines such as "Vogue", "House and Garden", "Glamour" and "Mademoiselle". In addition, Nast was in the business of designing, manufacturing and selling paper dress patterns in the United States and elsewhere in the world. In connection with its pattern

business Nast made use of the trademark and trade name "Vogue", which mark and name is registered worldwide for use in connection with both patterns and publications. The Vogue patterns were "manufactured and sold in a high style and price line...." (Exhibit A at 1).

On January 20, 1961 Nast entered into an agreement (Exhibit A) ["Sales Agreement"] to sell its Vogue Pattern business to the Butterick Company, Inc. ["Butterick"] as a going concern. Prior to this transaction Butterick was actively engaged in the pattern business using the trade mark and name Butterick. The Butterick patterns were "manufactured and sold in the low priced field...." (Exhibit A at 1).

The parties have stipulated that

[A]n essential element of the sale was the right of Butterick to continue use of the name "Vogue" in conjunction with the pattern business. No Sales Agreement would have been executed by Butterick if it did not have the right to use the Vogue name in connection with the pattern business purchased from Conde Nast....

Since Conde Nast was publishing VOGUE Magazine and wished to continue the use of the trademark and name "Vogue" in conjunction with its fashion magazine, a "License Agreement" was devised between the parties as part of the total Sales Agreement.

Stipulation at 2.

By the terms of the contract of sale the parties agreed that on March 31, 1961, the closing date, Butterick would inter alia, deliver 15,000 shares of Butterick stock valued at \$225,000 and pay Nast £ 62,749 in Australian currency. Additionally, the parties agreed to and did in fact enter into a "License Agreement" as part of the total Sales Agreement. By the terms of this agreement Nast granted Butterick "the sole and exclusive right and license to use the trademark 'Vogue' in the United States, Canada, England and Australia" as well as anywhere else in the world it could lawfully do so in connection with its paper dress pattern business. In return, Butterick was to pay Nast a "royalty" equal to 1% of all sales of dress patterns by Butterick (including Butterick as well as Vogue Patterns) after deductions for returns and credits. The agreement was modified slightly in 1967.

From 1963 through 1966 inclusive, Nast treated the "royalty" payments received from Butterick under the License Agreement as ordinary income for federal income tax purposes. In 1967 and 1968, however, Nast claimed the right to treat these payments as capital gains rather than ordinary income. In 1972 Nast paid the Internal

Revenue Service \$98,842.23 as an additional assessment for the year 1967 and \$91,534.18 as an additional assessment for the year 1968. On January 15, 1973, Nast filed a timely claim for refund of \$36,913.00 for overpayment of 1967 income taxes and \$45,865.00 for overpayment of 1968 income taxes.

The issue in this case is whether the payments received by Nast from Butterick in 1967 and 1968 pursuant to the terms of the License Agreement are receipts from the sale of a capital asset held for more than six months within the meaning of 26 U.S.C. § 1201. In essence, the Court must determine whether the 1961 "License Agreement" as amended in 1967 was a sale of the "Vogue" trademark and name for use in the paper dress pattern business, or merely a grant of a license by Nast to Butterick.

THE LICENSE AGREEMENT

The 1961 License Agreement granted Butterick the sole and exclusive right to the use of the Vogue name in the field of pattern design, manufacture and sale. It also contained a number of restrictions upon Butterick's use of the Vogue mark and name. These restrictions can be divided into three categories: quality control, termination of the agreement and restraints on alienation.

A. Quality Control

(1) The License Agreement provided that Butterick use the Vogue "trade-name only on patterns and pattern promotional material which are dignified and of high quality." (Exhibit B at 3). (2) Where Butterick used the Vogue name standing alone, its patterns and promotional material were to be of the same high standards and quality as Nast's similar efforts. (3) Where Butterick used the Vogue name in association with the Butterick name, the material was to be at least equal in quality to material previously designed, manufactured and sold by Butterick. (4) Upon Nast's request, Butterick was to permit Nast to inspect any material bearing the Vogue trade name "to ascertain that such patterns and promotional material conform in all respects ... " to the standards discussed in A(2) and (3) above. (5) Butterick agreed not to engage in or authorize "any undignified methods in advertising, publicizing, marketing, promoting or distributing ... " materials bearing the Vogue name. (6) The editorial staffs of Nast's fashion magazines would, "without cost, cooperate with Butterick to advise and assist Butterick with respect to fashion trends and current fashion information...."

B. Termination of the Agreement

Nast had the right to terminate the agreement:

(1) If Butterick failed to make timely payment of duly demanded royalties under the License Agreement or principal and interest due under the contract of sale. (2) If Butterick was adjudicated a bankrupt. (3) If Butterick ceased to engage in the business of selling dress patterns, unless coincidentally it transferred the business as detailed in (C) below. (4) If the majority of Butterick's issued and outstanding voting stock was transferred to a person or corporation engaged in the publication of a magazine devoted primarily to women's and girls' fashions, or if Butterick engaged in such publication itself. This provision would not be effective if at the time of the occurrence Nast was no longer engaged in publishing such magazines. (5) If Butterick executed an assignment or sublicense of its rights to the Vogue name in a manner inconsistent with the provisions of the agreement. (6) Upon termination of the agreement all right to the Vogue name in the pattern business reverted to Nast. (7) If, after the first year under the agreement royalties fell below \$1,000 Nast had the option to terminate on sixty (60) days' notice, but Butterick had the right to continue the agreement by paying the minimum royalties.

C. Alienability

Butterick could not assign or grant sub-licenses under the agreement except: (1) If Nast, which agreed not to unreasonably withhold its consent, consented in writing. Nast did, however, have an absolute right to refuse to consent to an assignment or sub-license to anyone engaged in the publication of magazines devoted primarily to women's and girls' fashions, provided that Nast was at the time still engaged in such publication. In addition, Nast could, without cause, refuse to permit a transfer to anyone who did not coincidentally acquire Butterick's pattern business. (2) Butterick could grant sub-licenses to any of its wholly-owned subsidiaries. (3) In the event that Butterick considered Nast to be unreasonably withholding its consent, the dispute was to be settled by binding arbitration.

In 1967, in connection with the purchase by the American Can Company of Butterick's business and assets, Nast and Butterick entered into a new License Agreement dated November 10, 1967 but effective retroactively, as of March 31, 1961. The agreement tracked the original License Agreement with the following exceptions: It noted that Nast was satisfied with the quality of the patterns being marketed under the Vogue name at the time

of the new agreement's execution and that Butterick would continue to adhere to that standard (p. 6 at 1(b)). The provisions requiring Butterick to permit Nast to examine all patterns and promotional materials bearing the Vogue name was changed to provide for periodic review by the parties. The new contract gave Nast the right to inspect Butterick's "manufacturing, packaging, storage and distribution operations" in order to ascertain that the standard of quality was being adhered to (p. 6 at 2(9)(ii)).

From an overall perspective it can be seen that Nast bargained for and received numerous contractual provisions, the primary purposes of which were "to preserve the value and reputation of the 'Vogue' tradename." (Stipulation at 4). Their purpose in protecting the Vogue name was, however, far more than an attempt to guarantee that Butterick would be able to make payments to Nast. The purpose, as becomes evident after a close reading of the License Agreement, was to assure that the name Vogue, which Nast still owned and used in the magazine field, would be associated only with high quality merchandise marketed in a manner befitting its top-of-the-line status. See Conde Nast Publications v. Vogue School of Fashion Modeling, 105 F.Supp. 325 (S.D.N.Y. 1952). The Court finds

that each and every provision of the License Agreement which restricts Butterick's use of the Vogue name was intended primarily to protect the value and reputation of the Vogue name for its use by Nast in the publication of Vogue Magazine.

THE LAW

In determining whether the instant transaction is a sale or a license the applicable principle of law can be stated as follows:

Although the courts have struggled to define the amount of control necessary to turn an apparent sale into a license, retention by the transferor of a substantial right in the transferred property or the continued participation of the transferor in the transferee's business is the touchstone of a license.

Leisure Dynamics, Inc. v. Commissioner, 494 F.2d 1340, 1343-44 (8th Cir. 1974) (quoting from the tax court). See also, Resorts International, Inc. v. Commissioner, 511 F.2d 107, 111 (5th Cir. 1975).

The leading cases^{1/} which deal with the problem

^{1/} The Court rejects the Government's contention that guidance can be found in the 1969 amendments to the Internal Revenue Code (26 U.S.C. § 1253). As the legislative history of this section makes clear, § 1253 changed the earlier case law, it did not codify it. S. Rep. No. 91-552, 91st Cong., 1st Sess. 208.

of differentiating a sale from a license involve the "sale" of Dairy Queen franchises by territorial franchisors to individual subfranchisees. Dairy Queen is a soft ice cream which is made in a patented machine. One McCullough owned the trademark Dairy Queen and had acquired the right to use, manufacture, sell and distribute the patented ice cream machine. McCullough, who had devised a formula for producing soft ice cream through the use of the patented machine, began to grant territorial franchises for Dairy Queen stores throughout the United States. The cases involve contracts entered into between individuals who obtained territorial franchises from McCullough [territorial franchisors] and their local franchisees.

The first case was Dairy Queen of Oklahoma, Inc. v. Commissioner, 250 F.2d 503 (10th Cir. 1957). There, the contract between the territorial franchisor and his local franchisees in Oklahoma provided that the franchisee was granted an exclusive license to prepare and sell Dairy Queen within a proscribed area of the state. The franchisor was to supervise installation of the patented machine, which would remain the property of the franchisor. The franchisor was to "be responsible for production, furnish the Dairy Queen formula, assist in obtaining a source of supply which must be approved by it, train key personnel, and otherwise

assist in opening the first store." 250 F.2d at 505.

In addition, the franchisor had the right to approve the location of the store and the franchisee agreed to "maintain standards of quality with regard to cones, cups, flavorings and miscellaneous supplies...." Id. If the franchisee violated any of the terms of the contract, the franchisor had the right to remove its Dairy Queen machines. In return, the franchisee made a lump sum payment for each machine that was installed and agreed to pay 35¢ for each gallon of mix processed in the machine.

Evaluating this contract, the court held that since "the traditional test of ownership is the power to exclude others" and the franchise was exclusive, the contract effectuated a sale. Id. at 506. The court regarded the restrictions as to mix, store design, cleanliness and cancellation for violation as "intended to insure uniform standards for the trade name product sold state-wide" and "not intended to reserve to the grantor any property or proprietary right in the exclusive and perpetual franchise." Id.

Upon practically identical facts the Fourth Circuit agreed with the Tenth and found a sale of the use of the machine, trademark and mix. Gowdey's Estate v. Commissioner, 307 F.2d 816, 818 (4th Cir. 1962). The court held

that the restrictions contained in the contracts were "necessary to protect the machine, product and name elsewhere." Id. at 819. Although troubled by the clause which conditioned transfer or assignment upon the permission of the franchisor, the court was nonetheless convinced that a sale had occurred in that "the privileges were transferred in perpetuity." Id. at 820. In a supplemental opinion the court pointed out that although a sale had occurred, only the down payment for the franchise could be considered capital gains and the 35¢ per gallon was a royalty which had to be treated as ordinary income.

In Moberg v. Commissioner, 305 F.2d 800 (5th Cir. 1962), the court found itself in accord with the Fourth Circuit's decision and reasoning and held that the lump sum payments were capital gains. As to the gallonage payments, however, the court remanded to the tax court for further findings of fact.

Soon thereafter the same taxpayers were before the Ninth Circuit in Moberg v. Commissioner, 310 F.2d 782 (9th Cir. 1962). The court there found that the taxpayers had entered into four (4) distinct contracts. Of these, only one, referred to as the "ten paragraph agreement" was found to have effectuated a sale. Among the restrictions

in the "ten paragraph agreement" were the restriction of assignment or transfer without approval, the right to inspect books and records and the obligation to maintain the building and equipment in a high state of repair. As to these restrictions the court stated:

The bulk of the restrictions consisted of the periodic duty to inform grantors of sales figures and freezer locations. Certain requirements of sanitation and repair were expressly imposed, but they would appear to deprive grantees only of the right to decide not to maintain their sales premises in clean, attractive condition. The loss of this right can hardly be said to detract significantly from grantees' prerogatives of ownership in light of the control of the conduct of their businesses transferred to them by the other provisions of the contracts. Furthermore, these policing standards were enforceable only by the grantors' power to terminate the entire transaction and did not subject grantees to the possibility of piecemeal future intervention by and at the will of the grantors. Provisions for total forfeiture for nonperformance of conditions are not per se inconsistent with the passage of ownership, Treas. Reg. § 1.1235-2(b) (2) (ii), and have been held not to defeat the sale of patents for capital gains purposes. See *Lawrence v. United States*, 5 Cir., 1957, 242 F.2d 542; *Allen v. Werner*, 5 Cir., 1951, 190 F.2d 840.

310 F.2d at 783 n.1. Regarding the three remaining contracts, however, the court held that "the restrictions upon the purchasers [relating to mix, use of other supplies, bookkeeping methods, maintenance of premises and right to sell other

products] were not fixed by contract, but remained to be determined from time to time by the grantors under a continuing power to make policy determinations in these respects." Id. at 784. As a result, the franchisor retained substantial rights in the form "of a power to exercise continuing, active operational control...." Thus these contracts were held to have effectuated something less than a sale.

The final case in the progression was United States v. Wernentin, 354 F.2d 757 (8th Cir. 1965). The facts in Wernentin revealed that Jester, the territorial franchisor for New Jersey, played an active and continuous role in the operation of the subfranchisee's business. he franchisor published, prepared and distributed a newsletter "conveying technical information and relating to the business generally, and items designed to assure control over individual operators." 354 F.2d at 761. In addition, he actively participated in the yearly statewide convention of Dairy Queen operators and provided frequent advice to the subfranchisor. In deciding that the contracts at bar did not effectuate sales the Court relied heavily upon the franchisor's course of conduct and declined to speculate on what it would have concluded had the record "contained only the cold contracts." (Id. at 766.)

Although a review of the above cases indicates that they are essentially irreconcilable, a comparison of the instant License Agreement with the contracts passed upon by the courts in the Dairy Queen cases is revealing and discloses the following: (1) Provisions for quality control; the contracts considered by the Tenth, Fourth and Fifth Circuits and those which the Ninth Circuit found to be leases rather than sales all provided the franchisor with the power to actively participate in the management of the individual stores.^{2/} Additionally, the standard to be applied by the franchisor in enforcing the quality control provisions was essentially unarticulated. By way of contrast, Nast retained no continuing right to participate in Butterick's business. Rather, Nast retained only a right to inspect. As to the quality control provisions, the agreement specified that when using the Vogue name, Butterick had to adhere to those standards previously utilized by Nast and when the Vogue name was used in conjunction with Butterick's, the material had to be at

^{2/} See also Schmitt v. Commissioner, 271 F.2d 301 (9th Cir. 1959) (a non-Dairy Queen patent franchise case finding the requirement that franchisor train franchisees' employees, who in turn would train licensees, a substantial restriction).

least equal in quality to material previously marketed by Butterick. Thus, Butterick knew the standard to which it had to conform. These provisions are analogous to those found in the Dairy Queen "ten paragraph agreement" which the Ninth Circuit found did not contain restrictions substantial enough to render the transaction a license rather than a sale. (2) As to termination, the instant agreement is silent as to Nast's recourse if Butterick fails to abide by the quality standards. Unlike the Dairy Queen contracts considered by the Tenth, Fifth, Eighth and Ninth Circuits, there is no provision in the License Agreement which permits Nast to terminate either with or without notice if Butterick fails to maintain the agreed-upon standards. In this respect the License Agreement is similar to the "ten paragraph agreement" (see 35 T.C. 773, 776-77 (1961)) which the Ninth Circuit held to be a sale, and includes a restraint less substantial than that considered by the Dairy Queen courts.

As to alienability, the contracts considered by the Tenth, Fourth, Fifth/^{and}Eighth Circuits and three of those considered by the Ninth Circuit prohibited transfer without prior approval. The License Agreement, however, while requiring Nast's consent prior to any transfer by Butterick, specifically provides that such consent shall

not be unreasonably withheld unless the proposed assignee is involved in the fashion magazine business, or does not coincidentally purchase Butterick's pattern business. In the latter two circumstances Nast has an absolute right to withhold consent to the transfer.

In sum, having compared the various Dairy Queen contracts to the Nast-Butterick License Agreement, the Court concludes that the restraints upon Butterick's use of the Vogue name contained in the Nast-Butterick License Agreement are less substantial than those found in the Dairy Queen contracts considered by the Tenth, Fourth, Fifth, Eighth and Ninth Circuits. Only the "ten paragraph agreement" considered by the Ninth Circuit contains similarly limited restrictions. Thus, in light of the fact that the circuits which have considered an analogous situation have found sales in contracts containing greater restrictions upon the purchaser's exercise of his purchased rights, this Court concludes that, based upon the terms of the License Agreement, a sale occurred in the instant case.

Finally, the facts in the record indicate that Nast's only actual ongoing "involvement" in Butterick's business was an occasional letter regarding the use of the Vogue name by Butterick in a manner which might lead the

public to believe that the product was associated with the magazine rather than Butterick's pattern business.

The Government contends that in spite of the above the agreement cannot have effectuated a sale because it transfers only a "field-of-use" right to the Vogue name and mark. That is, Butterick can use the name and mark only in the field of dress patterns. While there is no case law dealing with field-of-use restrictions in transactions involving transfers of trademarks and names, there is a body of law outside the Second Circuit holding that field-of-use restrictions in the transfer of a patent do not preclude capital gains treatment on monies paid to the transferor. E.g., E.I. Du Pont de Nemours & Co. v. United States, 432 F.2d 1052, 1057 (3d Cir. 1970). In this circuit the decision in Cory v. Commissioner, 230 F.2d 941 (2d Cir. 1956) held that as to a copyright, the transfer of the rights to publish the work in the United States and Canada was a sale even though the copyright owner did not transfer the right to publish the work in other English-speaking countries or the right to translate the work. Relying upon an earlier decision by Learned Hand (Goldsmith v. Commissioner, 143 F.2d 466, 467 (1944) (concurring opinion)) and an opinion authored by Justice Frankfurter (Commissioner v. Wodehouse, 337 U.S.

369, 401 (1949) (dissenting opinion)), Judge Frank held that the transfer of less than the "entire bundle of rights could constitute a sale." 230 F.2d at 944. Judge Frank, restated Justice Frankfurter's test as follows:

He maintained that the crucial test was not whether the transfer included the entire bundle of rights but whether there had been a transfer "absolutely" of a "distinct right conferred by the Copyright Law" under "terms of payment which do not depend on future use by the transferee." See 337 U.S. at pages 423-424....

230 F.2d at 944.

Applying that standard to the instant transaction: (1) The Court has found the transfer to be "absolute" within the meaning of the case law, i.e., it was a sale, not a license; (2) Nast has transferred a distinct portion of its bundle of rights regarding the Vogue name, i.e., the right to use it in the pattern business; (3) payment does not depend entirely upon future use of the name and mark by the transferee. Rather, the payment includes monies derived from the future sale of the Butterick patterns as well as the Vogue patterns.

In conclusion, the Court holds that under the standard enunciated in Cory v. Commissioner, supra, the transfer of the Vogue mark and name for a field-of-use does

not defeat capital gains treatment for the "royalty" payments from Butterick to Nast.

Having determined that a sale was effectuated, the Court must nonetheless determine whether all or any of the constituent elements of the "royalty" payments from Butterick to Nast are entitled to capital gains treatment. Based upon Judge Moore's opinion in Moberg v. Commissioner, 365 F.2d 337 (5th Cir. 1966) and the approach taken by the 1969 amendment (26 U.S.C. § 1253(c)), the Court concludes that the "royalty" payments attributable to sales of Butterick patterns are entitled to capital gains treatment while those payments attributable to sales of Vogue patterns are not.

In Moberg a court which had previously decided that the Dairy Queen transaction was a sale (305 F.2d 800 (5th Cir. 1962)) had before it the question of whether the "gallonage payments" were to be treated as capital gains or ordinary income. The gallonage payments, which were in addition to the fixed payment, were made to the franchisor on the basis of the amount of soft ice cream mix used by the franchisee. In some cases, these payments were to continue until the franchise terminated and in others, as long as no one else used the Dairy Queen machine in the franchisee's territory. Judge Moore held that it is

consistent with the "policies underlying the distinction between capital gains and ordinary income to regard the continuing gallonage payments as the yield of a retained interest in future earnings." 365 F.2d at 340.^{3/}

Recognizing the lack of a unified approach to the determination of how to treat continuing installment payments contingent on future sales (S. Rep. No. 91-552, 91st Cong., 1st Sess. at 208-209), Congress enacted 26 U.S.C. § 1253(c), which provides that amounts received as a result of the sale of a trademark or trade name which are contingent upon the use of the mark or name are to be treated as ordinary income. Under both the statutory approach and that outlined by Judge Moore, those payments which are the result of sales of Vogue patterns are to be treated as ordinary income, while that amount of the royalty payment which is attributable to sales of Butterick patterns is to be taxed as capital gain.

3/ Cf. Commissioner v. Wodehouse, 337 U.S. 369, 424 (1949) (Frankfurter, J., dissenting) (finding no sale where contingent payments in transfer of a copyright depended upon future use of copyright by transferee); Cory v. Commissioner, 230 F.2d 941, 944 (2d Cir. 1956).

A 156

The parties are therefore directed to either stipulate regarding the amounts attributable to sales of Butterick patterns, or to prepare for trial on that issue. See Kurlan v. Commissioner, 343 F.2d 625, 629 n.3 (2d Cir. 1965).

SO ORDERED.

JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
August 23, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CONDÉ NAST PUBLICATIONS INC.,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA,

Defendant.

Civil Action No.
73 Civ. 4909

STIPULATION

ORDER

WHEREAS, the Court signed an Opinion and Order, dated August 23, 1976, adjudicating the merits of the above-captioned tax refund action, subject to stipulation or trial regarding the amounts attributable to sales of Butterick Patterns; now, therefore,

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties hereto that:

1. The Butterick Division of American Can Company
(a) in 1967 had net sales of \$8,348,894 of
Vogue Patterns and net sales of \$7,336,087
of Butterick Patterns other than Vogue
Patterns, and

(b) in 1968 had net sales of \$9,496,016 of
Vogue Patterns and net sales of \$8,886,201
of Butterick Patterns other than Vogue
Patterns.

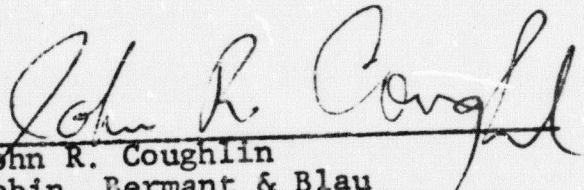
2. \$73,361 of monies received by The Condé Nast Publications Inc. from American Can Company representing payments under the 1961 License Agreement, as amended in 1967, were attributable to non-Vogue Pattern sales by American Can Company in 1967. Applying the Opinion and Order, said monies were taxable to The Condé Nast Publications Inc. at the then applicable capital gains rate (25%) rather than the ordinary income rate (48%).

3. \$88,862 of monies received by The Condé Nast Publications Inc. from American Can Company representing payments under the 1961 License Agreement, as amended in 1967, were attributable to non-Vogue Pattern sales by American Can Company in 1968. Applying the Opinion and Order, said monies were taxable to The Condé Nast Publications Inc. at the then applicable capital gains rate (27.5%, giving due consideration to the 10% surcharge) rather than the ordinary income rate (52.8%, giving due consideration to the 10% surcharge).

4. Pursuant to the Opinion and Order, plaintiff is entitled to judgment in the sum of \$16,873 for overpayment of 1967 income taxes, plus interest according to law, and judgment in the sum of \$22,482 for overpayment of 1968 income taxes, plus interest according to law.

5. This Stipulation is without prejudice to the right of either party to appeal from any judgment of the Court hereinafter entered.

Dated: March 7, 1977.


John R. Coughlin
Sabin, Bermant & Blau
Attorneys for Plaintiff

Robert B. Fiske, Jr.
U.S. Attorney, Southern District
of New York

By 
Assistant U.S. Attorney
Attorney for Defendant

SO ORDERED: 2/31/77

151 JOHN M. CANNELLA
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3-31-77
COURT
NEW YORK

THE CONDÉ NAST PUBLICATIONS INC.,

Plaintiff,

Civil Action No.
73 Civ. 4909

-against-

JUDGMENT JMC

THE UNITED STATES OF AMERICA,

Defendant.

77,455

This action having heretofore been submitted to the Court upon an agreed statement of facts, exhibits and briefs to the parties, and the same having been considered, and the Court having found, in an Opinion and Order dated August 23, 1976, that plaintiff is entitled to a partial refund of overpayments of federal income tax made by it in 1967 and 1968, and the parties having stipulated as to the amounts of such overpayments to be refunded to plaintiff, together with applicable interest, it is therefore

ORDERED AND ADJUDGED that plaintiff have and recover of and from the defendant the sum of \$16,873.00 for overpayment of 1967 income taxes and the sum of \$9,645.15 as interest thereon, plus the sum of \$22,482.00 for overpayment of 1968 income taxes and the sum of \$11,502.53 as interest thereon, for a total sum of \$60,502.68 .

Dated at New York, New York, this 31st day of March, 1977.

/s/ JOHN M. CANNELLA
United States District Judge

4-1-77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CONDÉ NAST PUBLICATIONS INC.,

Plaintiff,

-against-

THE, UNITED STATES OF AMERICA,

Defendant.



Civil Action No.
73 Civ. 4909

AMENDED
JUDGMENT

JMC.

77,728

This action having heretofore been submitted to the Court upon an agreed statement of facts, exhibits and briefs of the parties, and the same having been considered, and the Court having found, in an Opinion and Order dated August 23, 1976, that plaintiff is entitled to a partial refund of overpayments of federal income tax made by it in 1967 and 1968, and the parties having stipulated as to the amounts of such overpayments to be refunded to plaintiff, together with applicable interest, and the parties having consented to the form of judgment entered and filed on March 31, 1977, and the parties desiring, and having consented to the form of, this amended judgment, with the consent of the Court, it is therefore

ORDERED AND ADJUDGED that plaintiff have and recover of and from the defendant the sum of \$16,873.00 for overpayment of 1967 income taxes plus interest according to law together with the sum of \$22,482.00 for overpayment of 1968 income taxes plus interest according to law.

Dated at New York, New York, this ^{26th} ~~31st~~ day of March,

1977.

John M. Connolly
United States District Judge

JUDGMENT ENTERED - 5/31/77

Raymond F. Berglund

CLERK

MICROFILM

JUN 1 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CONDE NAST PUBLICATIONS
INC.,

Plaintiff,

-v-

THE UNITED STATES OF AMERICA,

Defendant.

Filed
5/31/77
NOTICE OF APPEAL

73 Civ. 4909 (JMC)

PLEASE TAKE NOTICE that defendant, United States of America, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment, dated March 31, 1977, and the amended judgment, dated May 26, 1977, signed by the Honorable John M. Cannella, United States District Judge, on the basis of the Court's opinion and order dated August 23, 1976.

Dated: New York, New York

May 27, 1977

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendant

By: 15

WILLIAM G. BALLANCE
Assistant United States Attorney
Office and Post Office Address:
The St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-0054

TO: SABIN, BERMANT & BLAU
Attorneys for Plaintiff
350 Madison Avenue
New York, New York 10017

CLERK
U.S. Court of Appeals
for the Second Circuit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CONDÉ NAST PUBLICATIONS
INC.,

Plaintiff,

-v-

THE UNITED STATES OF AMERICA,

Defendant.

FILED
U.S. DISTRICT COURT
JUNE 10, 1977
S.D. OF N.Y.

NOTICE OF CROSS-APPEAL

73 Civ. 4909 (JMC)

PLEASE TAKE NOTICE that, Defendant having filed its Notice of Appeal in this action on May 31, 1977, Plaintiff hereby cross-appeals to the United States Court of Appeals for the Second Circuit from so much of the Judgment, dated and entered March 31, 1977, and the Amended Judgment entered May 31, 1977, as had the effect of reducing the refund to which this Court found Plaintiff would otherwise have been entitled (a) for overpayment of 1967 Federal Income Taxes from \$36,913. to \$16,873., and (b) for overpayment of 1968 Federal Income Taxes from \$45,865. to \$22,482., which reduction, on the grounds set forth in the Opinion and Order of this Court (Hon. John M. Cannella, U.S.D.J.) dated and entered August 23, 1976, was without legal basis.

Dated: New York, New York

June 10, 1977

SABIN, BERMAN & BLAU
Attorneys for Plaintiff

By

John R. Coughlin
John R. Coughlin

Office and Post Office Address:
350 Madison Avenue
New York, New York 10017
Telephone: (212) 953-0400

TO: ROBERT B. FISKE, JR.
United States Attorney
for the Southern District
of New York
Attorney for Defendant
One St. Andrew's Plaza
New York, New York 10007

CLERK
U.S. Court of Appeals
for the Second Circuit

②
COPY RECEIVED
Robert B. Justice Jr.
UNITED STATES ATTORNEY
10/17/77
William H. Ballance